No. 3062

United States
Circuit Court of Appeals
For the Ninth Circuit.

EMMETT IRRIGATION DISTRICT, a municipal corporation, W. H. SHANE, N. B. BARNES and E. J. REYNOLDS, as Directors, and R. B. SHAW, as Treasurer of the Emmett Irrigation District, Appellants,

vs.

J. PAUL THOMPSON, A. N. GAEBLER, HELEN M. CONRAD, S. H. HUDSON, HENRY M. WILLIAMS, CHARLOTTE H. SHIPMAN, F. W. HORTON, MARY C. WADDELL, J. WILLIS GARDNER, CHESTER COUNTY TRUST COMPANY, a corporation, NATIONAL BANK OF OXFORD, a corporation, for themselves and all other bondholders of Emmett Irrigation District, similarly situated. Appellees.

Transcript of the Record

Upon Appeal from the District Court of the United States, District of Idaho, Southern Division.

SYMS-YORK CO., PRINTERS & BINDERS, BOISE 46057

*No.*_____

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PLAINTIFFS' CASE IN CHIEF.

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Names and Addresses of Counsel

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Caldwell, Idaho.
Attorneys for Appellants.

RICHARDS & HAGA,
McKEEN F. MORROW,
Boise, Idaho,
Attorneys for Appellees.

In the District Court of the United States for the District of Idaho, Southern Division.

In Equity No. 479.

J. PAUL THOMPSON, Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a municipal corporation, W. H. SHANE, N. B. BARNES, and E. J. REYNOLDS, as Directors, and R. B. SHAW as Treasurer of said Emmett Irrigation District, Defendants.

BILL OF COMPLAINT.

To the Honorable, the Judge of the District Court of the United States for the District of Idaho, Southern Division:

J. PAUL THOMPSON, a citizen of the State of Ohio, residing in the City of Cleveland, said State, brings this his Bill of Complaint against the Emmett Irrigation District, a municipal corporation organized under the irrigation district laws of the State of Idaho and situated in Canyon County, said State, and W. H. Shane, N. B. Barnes, and E. J. Reynolds, as Directors of said Emmett Irrigation District, and R. B. Shaw as Treasurer of said District, all residents and citizens of the State of Idaho residing in Canyon County, State of Idaho; and thereupon your orator complains and says:

I.

That your orator is a citizen and resident of the State of Ohio residing in the City of Cleveland, said State of Ohio.

II.

That the defendant Emmett Irrigation District is a municipal corporation organized and existing under the laws of the State of Idaho providing for the organization of irrigation districts.

III.

That the defendants W. H. Shane, N. B. Barnes and E. J. Reynolds, are the duly elected, qualified and acting Directors of the said Emmett Irrigation District and constitute the Board of Directors of said District, and they are citizens and residents, and each of them is a citizen and resident of the State of Idaho, residing in Canyon County, said State.

IV.

That the defendant R. B. Shaw is the duly appointed, qualified and acting Treasurer of said Emmett Irrigation District and is a citizen of the State of Idaho residing in Canyon County, said State.

V.

That the matter in controversy in this suit, exclusive of interest and costs, exceeds tte sum or value of $3,000.00 and is wholly between citizens of different states.

VI.

Your orator further shows that the said Emmett Irrigation District was organized on or about the 13th day of September, 1910, under and pursuant to an Act of the Legislature of the State of Idaho, entitled, "An act relating to irrigation districts and to provide for the organization thereof, and to pro-

vide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes, and for other and similar purposes," approved March 9th, 1903, and the acts amendatory thereof and supplemental thereto, the same being known as Title 14 of the Political Code of the State of Idaho; and that thereafter and on or about the 2nd day of November, 1910, the Board of Directors of said District at a meeting thereof duly and legally held for such purpose, proceeded to determine the amount of money necessary to be raised for acquiring the works, water rights and property and carrying out the plans theretofore formulated in the manner provided by law for furnishing and supplying water for the irrigation of the lands within said Emmett Irrigation District; that said Board at said meeting determined that the sum of One Million One Hundred Thousand Dollars ($1,100,000.00) was the amount of money necessary to be raised for acquiring the works and water rights and carrying out the plans so formulated and deemed necessary for irrigating the lands within said District; and thereupon and on said 2nd day of November, 1910, the said Board called a special election to be held in said District on December 3rd, 1910, at which election there should be submitted to the electors of said District, possessing the qualifications prescribed by law, the question whether or not the bonds of said District in the amount of One Million One Hundred Thousand Dollars ($1,100,000.00) should be authorized; that notice of such election was given by posting and pub-

lication for the time and in the manner required by the statutes of Idaho relating to such matters, and at such election one hundred and eight (108) votes were cast, all of which were "Bonds—Yes", and no votes were cast "Bonds—No," and on the 6th day of December, 1910, the said Board of Directors canvassed the returns of said election as aforesaid and declared the bonds of said District authorized for the sum and in the amount of One Million One Hundred Thousand Dollars ($1,100,000.00).

VII.

And your orator further shows that on or about the 19th day of December, 1910, the Board of Directors of said District filed in the District Court of said Canyon County a petition praying in effect that all proceedings of said Board from the organization of said District to and including the authorization and issuance of said bonds may be examined, approved and confirmed by the Court, and also that the proceedings of the Board of County Commissioners of Canyon County relating to the organization of said District may also be approved, examined and confirmed by the Court, and praying that said District may be held and decreed legally organized and that the bonds authorized to be issued as aforesaid may be held and decreed to be the legal, valid and binding obligations of said District; that such proceedings were had on said petition and in the matter of the confirmation of the organization of said District and the authorization of said bonds, that thereafter and in the month of January, 1911, the said

District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County made its findings of fact and conclusions of law and entered its judgment and decree approving and confirming each and all of the proceedings had and taken for the organization of said District, and adjudging the same to be duly organized, and that said bonds had been legally and properly authorized by the votes of the electors of said District at the election held as aforesaid on the 3rd day of December, 1910, and thereafter an appeal was taken from said judgment and decree to the Supreme Court of the State of Idaho, which Court on the 14th day of February, 1911, in a cause entitled "Emmett Irrigation District, a corporation, Respondent, vs. W. H. Shane, Appellant," affirmed the judgment entered by the said District Court and by its said decision (19 Idaho Reports, page 332, et seq.) approved and confirmed all the proceedings had and taken for the organization of said District and the authorization of said bonds.

VIII.

Your orator further shows that thereafter the said Emmett Irrigation District, acting by and through its Board of Directors, caused the bonds of said District, authorized as aforesaid, to be issued, sold and delivered to the amount of Nine Hundred Thousand Dollars ($900,000.00) or upwards, as your orator is informed and believes and so alleges the fact to be.

IX.

Your orator further shows that the said bonds were coupon bonds negotiable in form and payable to bearer and were issued as provided in Section 2397 of the Revised Codes of Idaho, and were of the denominations of One Hundred Dollars ($100.00), Five Hundred Dollars ($500.00), and One Thousand Dollars ($1,000.00), respectively, and, except as to number, amount and date of maturity, were identical in form and of like tenor and effect, and were in words and figures substantially as follows, to-wit:

"UNITED STATES OF AMERICA.
STATE OF IDAHO.
COUNTY OF CANYON.

$.....

EMMETT IRRIGATION DISTRICT.

Number..... First Issue.

Six Per Cent. Municipal Irrigation District Bond.
Series No. 1 .....Year Bond.

KNOW ALL MEN BY THESE PRESENTS: That the Emmett Irrigation District, a municipal corporation located in the County of Canyon, State of Idaho, for value received, acknowledges itself to owe and hereby promises to pay to the bearer hereof the sum of.....DOLLARS ($.....) on the First day of January, A. D. 19...., together with interest thereon from the date hereof until paid at the rate of six per cent. (6%) per annum, interest payable semi-annually on the first days of January and July in each year upon presentation of the annexed interest coupons as they severally become due.

Both principal and interest are payable in lawful money of the United States of America at the office of the Treasurer of Emmett Irrigation District in the County of Canyon in the State of Idaho, or, at the option of the holder hereof. at the Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois. This bond is one of a series of bonds aggregating One Million One Hundred Thousand Dollars ($1,100,000.00) in amount and issued by the undersigned by authority of an act of the Legislature of the State of Idaho entitled "An Act relating to irrigation districts and to provide for the organization thereof and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes, and for other and similar purposes," approved March 9th, 1903, together with acts amendatory thereto and supplemental thereto, the same being known as "Title 14 of the Political Code of the State of Idaho," entitled "Irrigation Districts." Said Series consisting of two hundred and sixty-two (262) bonds of the par value of One Thounsand Dollars ($1,000.00) each, numbered consecutively from M-1 to M-262, inclusive; sixteen hundred and forty-six (1646) bonds of the par value of Five Hundred Dollars ($500.00) each, numbered consecutively from D-1 to D-1646 inclusive, and one hundred and fifty (150) bonds of the par value of One Hundred Dollars ($100.00) each, numbered consecutively from C-1 to C-150, inclusive, which are due and payable as follows: Fifty-five Thousand Dollars ($55,000) in amount, being bonds

numbered from D-1 to D-110, inclusive, on January 1st, 1922; Sixty-six Thousand Dollars ($66,000) in amount, being bonds numbered from M-1 to M-7, inclusive, and from D-111 to D-228, inclusive, on January 1st, 1923; Seventy-seven Thousand Dollars ($77,000) in amount, being bonds numbered from M-8 to M-17, inclusive, and from D-229 to D-362, inclusive, on January 1st, 1924; Eighty-eight Thousand Dollars ($88,000) in amount, being bonds numbered from M-18 to M-32, inclusive, and from D-363 to D-508, inclusive, on January 1st, 1925; Ninety-nine Thousand Dollars ($99,000) in amount, being bonds numbered from M-33 to M-42, inclusive, and from D-509 to D-656, inclusive, and from C-1 to C-150, inclusive, on January 1st, 1926; One Hundred and Ten Thousand Dollars ($110,000) in amount, being bonds numbered from M-43 to M-57, inclusive, and from D-657 to D-826, inclusive, on January 1st, 1927; One Hundred and Twenty-One Thousand Dollars ($121,000) in amount, being bonds numbered from M-58 to M-92, inclusive, and from D-827 to D-998, inclusive, on January 1st, 1928; One Hundred Forty-Three Thousand Dollars ($143,000) in amount, being bonds numbered from M-93 to M-137, inclusive, and from D-999 to D-1194, inclusive, on January 1st, 1929; One Hundred Sixty-Five Thousand Dollars ($165,000) in amount, being bonds numbered from M-138 to M-192, inclusive, and from D-1195 to D-1414, inclusive, on January 1st, 1930, and One Hundred Seventy-Six Thousand Dollars ($176,000) in amount, being bonds numbered from M-193

to M-262, inclusive, and from D-1415 to D-1646, inclusive, on January 1st, 1931. And it is hereby certified that all things required by law to be done in and about the organization of said District and the issuance of the said bonds have been done, have happened and have been performed, and that the issuance of this bond has been duly and legally authorized by vote of the electors of said District at a special election duly called and held in accordance with the provisions of the said Act and by resolution of its Board of Directors, and that all other acts, conditions and things required by the laws and constitution of the State of Idaho precedent to and in the issue and delivery of this bond have been done, have happened and have been performed, and that said bonds are the valid, binding and legal obligation of the said District; that all the real property included within said District is subject to the levy of an annual tax for the payment thereof.

IN WITNESS WHEREOF, the said Emmett Irrigation District has by virtue of the authority aforesaid caused this bond to be executed in its name by its President and Secretary and the seal of its Board of Directors to be affixed hereto this First day of January, A. D. 1911.

(Seal) EMMETT IRRIGATION DISTRICT.

(Signed) By W. E. BELL,

Attest: President.

HARRY S. WORTHMAN,

Secretary."

That to each of said bonds semi-annual interest coupons were attached, all of which were of like tenor and effect and identical in form, except as to date of maturity, amount, and the number of the bond to which they were attached; said coupons, with the exceptions stated, being substantially in words and figures following, to-wit:

"On the first day of.....A. D. 19....,
EMMETT IRRIGATION DISTRICT will pay to bearer at the office of the County Treasurer of Canyon County, Idaho, or at the option of the holder hereof at Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois, the sum of..... Dollars in lawful money of the United States, being six months' interest due that day on its Municipal Irrigation District Bond of January 1st, A. D. 1911.

Series No. 1, Issue No. 1.

No..... $.....

HARRY S. WORTHMAN,

Secretary."

X.

Your orator further shows that all of said bonds were signed by the President and Secretary of said Emmett Irrigation District, and the seal of the Board of Directors of said District affixed thereto, and that the interest coupons attached to said bonds were each and all signed by the Secretary of said District. And said bonds were thereupon issued and sold by said District in the manner in such cases made and provided by the laws of the State of Idaho, as your orator is informed and believes and so alleges the fact to

be, and the proceeds thereof received and used by said District in the purchase of irrigation works, water rights and property required or deemed necessary by the Board of Directors of said District for carrying out the plans formulated by said Board, as hereinbefore stated, for the purpose of furnishing water for irrigating the lands situated within the boundaries of said District.

XI.

Your orator further alleges and shows that relying upon the decision of the Supreme Court of the State of Idaho in the cause heretofore referred to wherein the said Emmett Irrigation District was respondent and the said W. H. Shane, appellant, reported in Volume 19, Idaho Reports, page 332, and the decision of the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County in said cause holding, adjudging and decreeing said District legally organized and existing, and that said bonds had been legally authorized and were the valid and binding obligations of said District, and relying also upon the recitals contained in said bonds that the same had been issued in compliance with the laws of the State of Idaho and that all things required to make the same the legal, valid and binding obligations of said District had been done and had happened and been performed, and that all real property included within said District was subject to levy of an annual tax for the payment thereof, and without notice or knowledge of any fact whatsoever impairing the validity of said bonds or any of them, your orator pur-

chased prior to January 1st, 1914, for a valuable consideration the bonds of said District issued as aforesaid, to the amount of One Hundred and One Thousand Dollars ($101,000.00) and now is and ever since has been the owner and holder of said bonds, which said bonds are of the number and denomination following, to-wit:

M-14, M-15, M-16, M-18, M-19, M-132, M-133, M-134, M-135, M-136, M-143, M-144, M-145, M-203, and M-232, total fifteen (15) bonds, each of the denomination of One Thousand Dollars ($1,000.00), and D-63, D-64, D-65, D-66, D-111, D-112, D-120, D-121, D-139, D-140, D-141, D-142, D-150, D-151, D-152, D-153, D-154, D-174, D-175, D-176, D-177, D-178, D-179, D-180, D-246, D-261, D-268, D-279, D-280, D-283, D-284, D-285, D-286, D-287, D-288, D-307, D-310, D-311, D-312, D-318, D-319, D-361, D-408, D-409, D-410, D-411, D-412, D-416, D-417, D-418, D-481, D-482, D-483, D-484, D-485, D-486, D-487, D-488, D-489, D-490, D-500, D-501, D-502, D-503, D-504, D-519, to D-538, inclusive, D-569 to D-578, inclusive, D-594, D-599, D-644, D-645, D-651, D-652, D-653, D-654, D-655, D-656, D-673, D-674, D-675, D-676, D-717 to D-726, inclusive, D-742, D-743, D-780, D-783, D-784, D-785, D-786, D-787, D-788, D-801 to D-814, inclusive, D-833, D-1065, D-1066, D-1070, D-1071, D-1072, D-1278, D-1279, D-1280, D-1281, D-1305, D-1306, D-1307, D-1308, D-1309, D-1321, D-1332, D-1432, D-1598, D-1599, and D-1600 to D-1609, inclusive, total one hundred seventy-two (172) bonds, each of the denomination of Five Hundred Dollars ($500.00).

XII.

Your orator further alleges and shows that after the said District had sold, issued and delivered its said bonds, it determined the benefits which would accrue to each of the tracts or subdivisions of land from the purchase and construction of the irrigation works and paid for by the proceeds from the sale of said bonds, and said Board caused the cost of such works to be apportioned over each tract and subdivision of land in said District in proportion to the benefits received, all as provided in Section 2399 of the Revised Codes of Idaho as amended by Chapter 154 of the Session Laws of 1911 of the Legislature of the State of Idaho, and said Board caused to be prepared a list of such apportionment or distribution containing a complete description of each subdivision or tract within said District, with the amount and rate per acre of the apportionment of such costs and the name of the owner thereof, together with all necessary maps, and the action of such Board in apportioning such benefits and the cost of such works to the several tracts of land in said District was thereafter and upon the petition of such Board, filed as required by law, duly approved and confirmed by the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County and the decree and judgment of said Court in said matter was entered on or about the .....day of June, 1913, and no appeal was taken therefrom, and such decree has become final.

XIII.

Your orator further alleges and shows that all interest accruing on said bonds and evidenced by interest coupons thereto attached, as aforesaid, maturing January 1st and July 1st of each year, has been paid, except the interest coupons maturing January 1st, 1914, none of which have been paid, and the amount of such interest coupons attached to the bonds held by your orator and representing the interest due thereon on the 1st day of January, 1914, and remaining unpaid as aforesaid, aggregates the sum of Three Thousand Thirty Dollars ($3,030.00).

XIV.

Your orator further shows that on or about the 22nd day of October, 1913, at a regular adjourned meeting of the regular session of the Board of Directors of said District for the said month of October, the said Board of Directors levied an assessment against all the lands in said District, aggregating Fifty-Five Thousand Dollars ($55,000.00) for the payment of the interest maturing January 1st, 1914, and July 1st, 1914, upon the outstanding bonds of said District, including the bonds owned and held by your orator as aforesaid, which said levy and assessment was based upon the assessment of benefits as fixed by the said Board and confirmed by the said District Court in and for Canyon County, as aforesaid, and the Secretary of said District thereupon prepared the assessment book and on or before November 1st, 1913, delivered the same to the Treasurer of the District. That the

Treasurer of said District after receiving such assessment book from the Secretary, and within ten days thereafter, published notice for the time and in the manner required by Chapter 139 of the Session Laws of 1911 of the State of Idaho, amending Section 2412 of the Idaho Revised Codes, that said assessments were due and payable and would become delinquent at six o'clock P. M. on the third Monday of December next thereafter, and stated also therein the times and places at which payments of the assessments might be made, which notice was published for at least three times in a weekly paper published in the County in which said District is situated.

XV.

Your orator further shows that a large number of land owners and taxpayers in said Emmett Irrigation District have paid the taxes so levied and assessed against their said lands for the payment of interest on the bonds held by your orator and on other outstanding bonds of said Emmett Irrigation District, but the said District and the Treasurer and Board of Directors thereof have failed and neglected to use any of said money so collected to pay the interest on said bonds maturing January 1st, 1914, but have allowed default to be made in the payment of such interest and have failed and neglected to deposit with the said Fort Dearborn Trust and Savings Bank of Chicago, Illinois, any money to meet the interest maturing January 1st, 1914, on the bonds of said District, and on or about the 9th day of January, 1914, your orator caused to be presented to the Treasurer

of said District for payment the interest coupons maturing January 1st, 1914, on his said bonds which said interest coupons aggregate, as heretofore stated, Three Thousand and Thirty Dollars ($3,030.00), and demanded payment thereof, but the said Treasurer, notwithstanding he had in his possession and in his custody and control the interest fund belonging to said District and collected as aforesaid from the taxpayers in said District for the purpose of paying such interest, and which interest fund exceeded the amount of the coupons so presented for payment, declined to pay said coupons or any of them, and declined to use the money in such interest fund for the payment of said coupons, and the said District is now in default in the payment of said coupons, notwithstanding there is, as heretofore stated, in the possession of the Treasurer of said District and under his control sufficient money in the interest fund created for such purpose, with which to pay such coupons.

XVI.

Your orator further shows that for some reason unknown to your orator the said defendants declined to apply the moneys collected from the taxpayers of said District with which to pay said interest, to the payment of the interest due on said bonds or the coupons held by your orator, and unless enjoined and restrained by this Honorable Court the said defendants will either return such money to the persons from whom the same was collected or who paid the same to said Treasurer for the use of said interest fund, or will divert such money from the

interest fund and use it for other purposes and will not apply it to the payment of interest or to any purpose for the benefit of the holders of said bonds.

XVII.

Your orator further alleges and shows upon his information and belief that default in payment will be made by the said defendants from time to time as each installment of interest on said bonds becomes due and payable. And your orator further shows that the principal of none of said bonds will become due or payable for many years to come; that said bonds mature serially, commencing the first day of January, 1922, and extending over a period of ten years, as provided in Section 2397 of the Revised Codes of Idaho; that should your orator and other holders of said bonds be required to bring suits against said District as each installment of interest on said bonds becomes due, or as the principal of said bonds mature, numerous suits would be required; and if suit or action against the District be delayed until all of said bonds have become due and payable great and irreparable injury will be sustained by your orator and all holders of said bonds because of loss of interest and the uncertainties and unsettled conditions for many years and which will wholly destroy the market value of said bonds in the meantime; that it would be impossible for said District and the taxpayers therein to pay the whole of said bond issue and the accumulated interest thereon by one levy or assessment; that the same can only be paid in installments extending over a long period

as provided in said bonds and as contemplated by the laws of the State of Idaho relating to such matters.

Your orator further shows that in order to avoid great loss and injury to your orator and other holders of said bonds, it is necessary to have said bonds decreed without delay, to be the legal and valid obligations of said District, and to have appropriate process for enforcing the payment of the interest and principal thereof, as the same becomes due from time to time. And your orator brings this suit for himself and all other holders of bonds of said District, who may desire to join in this proceeding and pay their proper proportion of the costs herein.

XVIII.

Your orator further alleges and shows upon his information and belief, that the said defendants, officials of said District, are counselling and advising taxpayers in said District not to pay their taxes levied for the purpose of paying the interest on said bonds, and are making no effort to collect the payment of such taxes, but by their actions, conduct, and statements, are encouraging default in the payment of such taxes and are encouraging agitation and litigation against the bondholders, and fomenting a spirit of repudiation among the taxpayers, with a view of ultimately repudiating the payment of the bonds issued as aforesaid, and the interest thereon, including the coupons held by your orator, as aforesaid; and inviting suits by taxpayers of said District, attacking the validity of such bonds and the right of the Dis-

trict to pay such bonds or the interest thereon; that said defendants by their conduct and actions are greatly depreciating the market value of said bonds, and causing irreparable injury to your orator in the premises, and to other holders of the bonds of said District; that said defendants should in justice and good conscience, as well as by the law, be held estopped from claiming any irregularities in the issuance, delivery or sale of said bonds that could or might invalidate the same in the hands of your orator, who is an innocent holder for value without notice or knowledge of any irregullarity in the authorization, issuance or sale thereof, or in any matter whatsoever affecting the same; and your orator verily believes that unless the said defendants and each of them, are restrained and enjoined by this Honorable Court, they will not only divert or appropriate for other uses, or return to the taxpayers the moneys collected as aforesaid for the payment of interest on said bonds, but will allow default to be made in the steps and proceedings required to be taken by them in order to make legal or valid the sale of property in said District for delinquent taxes, and will permit the taxpayers who have paid no taxes to wholly escape the penalties of such default and escape the payment of such taxes, and will institute or encourage proceedings to be instituted and actions to be commenced against the District attacking the validity of said bonds, all of which will render the bonds held by your orator, and the other bonds of said District issued as aforesaid, unsalable, and will greatly depreciate, if not entirely

destroy, the market value thereof, and will result in numerous suits and long and protracted litigation and otherwise cause great and irreparable injury to your orator and other holders of the bonds of said District.

IN CONSIDERATION WHEREOF, and forasmuch as your orator is without adequate remedy, save in a Court of Equity, your orator prays this Honorable Court to issue its writ of subpoena in due form of law, directed to the said Emmett Irrigation District and W. H. Shane, N. B. Barnes and E. J. Reynolds as Directors, and R. B. Shaw as Treasurer of said Emmett Irrigation District, defendants aforesaid, commanding them, and each of them, at a certain day and under a certain penalty to be therein specified, to appear before this Honorable Court to answer all and singular the matters and things hereinbefore set forth and complained of. But the answer to the bill of complaint need not be under oath, an answer under oath being hereby expressly waived.

And your orator prays that the said defendants, and each of them, may be restrained by injunction, preliminary until further hearing and perpetual thereafter, from diverting or otherwise appropriating or using for any purpose other than for the payment of interest on the bonds of said District the moneys collected for or hereafter paid into the interest fund created for the payment of interest on the bonds of said District issued as aforesaid, and that said defendants be required to apply the money in

said interest fund to the payment of the interest due on the bonds of said District, and that they, and each of them, be restrained and enjoined from fomenting, instigating, or encouraging by their acts, statements, conduct or otherwise, suits or actions to be instituted or commenced against the District or the holders of its bonds attacking the validity of the bonds or coupons issued as herein alleged, or enjoining the payment thereof or the payment of the interest thereon, and from counselling, advising or in any manner encouraging default on the part of taxpayers in the payment of the taxes levied as herein alleged for the payment of interest on such bonds, and from doing any act or thing whatsoever which can or may depreciate the market value of said bonds and the interest coupons thereto attached, and that they be enjoined and restrained from allowing or permitting default to be made in the proceedings or any of the proceedings required to be taken or the acts to be performed under the laws of the State of Idaho in order to accomplish a valid sale of property in said District for delinquent taxes under the levy made by said Board for the payment of interest on the bonds of said District, and that they, and each of them, be enjoined from instituting any proceedings or making any defense to any suit or action instituted by others attacking the validity of the bonds held by your orator or of the coupons thereto attached; and that upon final hearing it may be adjudged and decreed that all the bonds of said District of the said issue and series are legal and valid

obligations of said District, and that payment thereof and of the interest coupons thereto attached must be made at the time and in the manner therein provided; and that your orator may have such other and further relief as the nature and circumstances of the case may require, and as to this Court shall seem just and equitable.

J. H. RICHARDS,
OLIVER O. HAGA,
McKEEN F. MORROW,
Solicitors for Complainant.
Office and Post Office Address:
Idaho Building, Boise, Idaho.

United States of America,
District of Idaho.—ss.

OLIVER O. HAGA, being duly sworn, deposes and says: That he is one of the solicitors for J. Paul Thompson, plaintiff above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that he believes the same to be true; that he makes this affidavit and verification for and on behalf of said plaintiff for the reason that said plaintiff is absent from the said District, and this affiant further says that he has obtained his information relative to the matters set forth in said bill of complaint from official records and letters and other communications received concerning such matters from sources which he believes to be reliable.

OLIVER O. HAGA.

Subscribed and sworn to before me, this 10th day of March, 1914.

EDNA L. HICE,

(Seal) Notary Public.

Endorsed: Filed March 10, 1914.
A. L. Richardson, Clerk.
By E. B. Yarington, Deputy.

(Title of Court and Cause.)

No. 479.

AMENDMENT TO BILL.

Now comes the plaintiff under leave of Court first had and obtained, and amends his Bill of Complaint herein as follows:

First: By striking out in Paragraph XVI of said bill in the first and second lines thereof the words "for some reason unknown to your orator the said defendants," and inserting in lieu thereof the following: "the defendants wrongfully and without cause."

Second: By inserting a new paragraph to be numbered Paragraph XIX at the end of Paragraph XVIII and between said Paragraph XVIII and the prayer of said bill, to read as follows:

XIX.

Your orator further shows that the said defendants sometimes contend that a portion of the bonds, to-wit: about one-fifth thereof, issued by said Emmett Irrigation District were issued or sold by said District without any consideration, or any adequate

consideration being paid therefor, but said defendants do not state or pretend to know which of said bonds were so issued and do not identify them by number or otherwise so that any of the present holders of said bonds or any other person can learn or ascertain what bonds the said defendants refer to or contend were sold illegally or without adequate or any consideration having been paid therefor, and by reason of such general, vague and indefinite charges against the outstanding bonds of said District a cloud is thrown upon the validity or legality of all the bonds of said District so outstanding, including the bonds held by your orator, and the market value of all of such bonds is thereby greatly depreciated, if not entirely destroyed, but your orator is informed and believes and alleges the fact to be that such contentions or charges are wholly unfounded and untrue and are made only for the purpose of furnishing some excuse or pretense for not paying interest on any of the bonds issued by said District and for defaulting in the payment of such tax and for doing the other acts and things hereinbefore set forth and charged against the said defendants; that such false and unfounded charges, made as aforesaid by the officers of said District against the bonds so issued and outstanding, have been widely circulated and are frequently made and repeated, and as a result thereof defaults are being made by the taxpayers in the payment of the taxes levied for the payment of interest on said bonds, and the contentions, agitation and controversies over the

validity of said bonds and over the payment of such taxes are becoming general throughout said District and reports thereof are being circulated by taxpayers in and officers of said District among financial institutions and investors dealing in such bonds, and your orator verily believes that numerous suits will be instituted by taxpayers in said District attacking the validity of such bonds and the validity of the assessments made for the payment of interest thereon, and statements have repeatedly been made by officers of said District and by some of the defendants herein that the District will not pay said bonds unless compelled to do so by a decree or judgment of Court; that one suit has already been instituted in the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County by one Clayton B. Knox against the said R. B. Shaw as Treasurer of the said Emmett Irrigation District for an order restraining said defendant as Treasurer of said District, from collecting or attempting to collect any tax from said plaintiff for the payment of interest on said bonds, or any of them, or from advertising plaintiff's land for sale and from issuing any certificate of sale or tax deed thereto, because of the failure of plaintiff to pay such tax; that such suit is still pending before said Court undetermined and without any order or decree having been entered therein. And your orator believes that other suits by other taxpayers or other persons interested in said District or officers of said District will be instituted at any time involving the validity of such tax

and the validity of said bonds and final judgments or decrees may be entered therein against said District or the officers thereof affecting the validity of said bonds and the collection of taxes for the payment of the interest or principal of said bonds, all without notice to or knowledge thereof by the holders of said bonds, who are widely scattered and who reside mostly, if not entirely, in other States than the State of Idaho and at such distances from the place where such suits will be brought that they could not except by the merest chance, learn such suits had been brought or were pending; and your orator further shows that because of the attitude of the said defendants towards the said bonds no adequate or proper defense to such suits will be made by said defendants.

J. PAUL THOMPSON,
By RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Complainant.

Post Office Address: Idaho Building, Boise, Idaho.

United States of America,
District of Idaho.—ss.

Oliver O. Haga, being first duly sworn, deposes and says, that he is one of the solicitors for J. Paul Thompson, plaintiff above named; that he has read the foregoing amendment to plaintiff's Bill of Complaint and knows the contents thereof and believes the same to be true; that he makes this affidavit and verification for and on behalf of said complainant for the reason that said plaintiff is absent from said

District; and this affiant further says that he has obtained his information relative to the matters set forth in said amendment from official records and letters and other communications received concerning such matters, and from sources which he believes to be reliable.

OLIVER O. HAGA.

Subscribed and sworn to before me, this 5th day of June, 1914.

EDNA L. HICE,

(Seal) Notary Public.

Endorsed: Filed June 6, 1914.

A. L. Richardson, Clerk.

By E. B. Yarington, Deputy.

(Title of Court and Cause.)

No. 479.

ANSWER OF EACH AND ALL OF THE ABOVE NAMED DEFENDANTS TO THE BILL OF COMPLAINT OF THE ABOVE NAMED PLAINTIFF.

I.

Answering paragraph one of said complaint said defendants say: That the said defendants, and each of them, are without knowledge as to whether or not the plaintiff is a citizen and resident, or citizen or resident of the State of Ohio, or as to whether or not said plaintiff resides in the City of Cleveland in the State of Ohio.

II.

Answering paragraph two, three and four of said

bill of complaint, said defendants, and each of them, admit all the allegations contained in said paragraphs.

III.

Answering the allegations contained in paragraph five of said complaint, said defendants and each of them admit each and all the allegations of said paragraph, save and except the allegation that the matter in controversy in this suit is wholly between citizens of different states, as to which said allegation defendants and each of them are without knowledge.

IV.

Answering the allegations of paragraph six and seven of said complaint, the said defendants, and each of them, admit the allegations contained in said paragraphs.

V.

In answer to the allegations contained in paragraph eight of said complaint, the defendants, and each of them, deny that thereafter, or at any other time, the said Emmett Irrigation District, acting by or through its board of directors, or otherwise, caused the bonds, or any bonds of said district, authorized as aforesaid, or otherwise, to be issued, sold and delivered, or to be issued or sold or delivered, to the amount of $900,000.00, or upwards, or any other amount, or at all, except as hereinafter set forth.

VI.

Answering the allegations contained in paragraph nine of said complaint, the defendants admit that

the bonds authorized by vote of the district were coupon bonds, negotiable in form; deny that the said bonds authorized were payable to bearer; deny that the bonds authorized were authorized in denominations of $100, $500, and $1,000, respectively, or in either or any of said denominations, and allege the fact to be that no denominations for said bonds authorized were ever fixed or authorized by the said District; deny that said, or any, bonds or coupons were authorized by said District, which, with or without exception as to number, amount and date of maturity, or number, or amount, or date of maturity, or any other exception, were identical in form, or otherwise, or in like tenor and effect, or tenor or effect, with the copy of bond and coupon set forth in paragraph nine of said complaint, or which were in words or figures, or substantially, or otherwise, as set forth in paragraph nine of said complaint, except as hereinafter set forth; and, in this connection, the defendants allege the fact to be that no form of bond or coupon was ever authorized by said District; deny that any bond or bonds whatever, or any coupons attached to said or any bonds, were issued as provided in Section 2397 of the Revised Codes of Idaho, or as is alleged in paragraph nine of said complaint, or otherwise, except as hereinafter set forth.

VII.

In answer to the allegations contained in paragraph ten of said complaint, the defendants deny that either the said, or any, bonds were signed by

the president and secretary, or president or secretary of the said Emmett Irrigation District, or the seal of said board of directors or of said district affixed thereto, except as hereinafter set forth.

VIII.

Answering the allegations contained in paragraph eleven of said complaint, these defendants deny that, relying upon the decision of the Supreme Court of the State of Idaho, in the case in said complaint referred to, wherein said Emmett Irrigation District was respondent and the said W. H. Shane was appellant, or relying upon the decision of the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County in said cause, or relying also, or otherwise, upon the recitals contained in said bonds, as alleged in said paragraph eleven of said complaint, or without notice of knowledge of any fact whatsoever impairing the validity of said bonds, or any of the foregoing, or otherwise, said plaintiff purchased, prior to January 1st, 1914, or at any other time, or at all, for a valuable, or any other, consideration, the said bonds, or any bonds of the said District, issued as aforesaid, or otherwise, to the amount of $101,000.00, or any other sum; deny that the decision of the Supreme Court of the State of Idaho, in the case referred to in said complaint, wherein the said W. H. Shane was appellant and the Emmett Irrigation District was respondent, or that the decision of the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County, in said cause, either held, ad-

judged or decreed that the said, or any, bonds were, or are, now, the valid or bonded obligation of said District; and, in this connection, the said defendants are informed and believe, and hence on information and belief allege, that the said plaintiff gave no consideration whatever for the bonds noted and set forth in said complaint, and that if said plaintiff is the holder of the said bonds, or either of them, or any other bonds of the said Emmett Irrigation District, that said plaintiff had full notice and knowledge of all the facts in this answer herein set forth at the time he acquired the same.

Further answering the allegations contained in said paragraph eleven of said complaint, and in particular the allegation that the said plaintiff now is, and ever since has been, the owner and holder of said bonds described in the complaint, of the number and denomination set forth in said paragraph eleven, or any other bonds of the said Emmett Irrigation District, these defendants say, that as to the facts set forth in said allegation they are without knowledge.

IX.

Answering the allegations contained in paragraph twelve of said complaint, these defendants deny that the said District, at any time, sold, issued or delivered said, or any, bonds, except as hereinafter set forth; deny that any irrigation works were purchased or constructed, acquired or paid for by the proceeds of the sale of said, or any, bonds, or that any proceeds whatever were received by said District for the sale of any bonds, except as hereinafter set forth;

deny all other allegations contained in said paragraph twelve.

X.

In answer to the allegations set forth in paragraph thirteen of said complaint, defendants, and each of them, deny that all or any interest accruing on the said, or any, bonds, evidenced by interest coupons thereto attached, as aforesaid, or otherwise, maturing January 1st and July 1st, or January 1st or July 1st, of each year, or any other time, has been paid, except as hereinafter set forth; admit the interest coupons maturing January 1st, 1914, have not been paid; deny that any interest has accrued on said, or any, bonds or coupons, and deny that any interest is due plaintiff on any bonds or coupons, or bonds or coupons of the Emmett Irrigation District; and, further answering the allegation that the amount of such interest coupons attached to the bonds held by plaintiff aggregate the sum stated in said paragraph, these defendants say that they are without knowledge as to whether or not said or any bonds, or coupons, of the Emmett Irrigation District, are held by said plaintiff.

XI.

Answering the allegations contained in paragraph fourteen of said complaint, these defendants admit all the allegations therein contained.

XII.

Answering the allegations contained in paragraph fifteen of said complaint, these defendants admit

all the allegations contained in said paragraph fifteen, except the allegation that the board of directors of said District have allowed default to be made in the payment of interest, and the allegation that the said District is now in default in the payment of said coupons, and, in answer to said allegations, these defendants say: That no interest is due from said District to any person or persons on any bonds or coupons of said District, save and except as hereinafter set forth.

XIII.

Answering the allegations contained in paragraph sixteen of said complaint, said defendants, and each of them, deny that they, wrongfully and without cause, or wrongfully or without cause, declined to apply the moneys collected from the taxpayers of said District with which to pay interest, to the payment of the interest due on said bonds, or the coupons held by said plaintiff; deny that any interest is due on said bonds or coupons held by said plaintiff, and as to whether or not any bonds or coupons are held by said plaintiff, defendants and each of them are without knowledge; deny that unless enjoined and restrained, or enjoined or restrained, by this Honorable Court, or otherwise, the said defendants, or any of them, will either return such, or any, money to the persons from whom the same was collected or who paid the same to the Treasurer for the use of said interest fund, or any other person, or that said defendants, or any of them, will divert such, or any, money from said interest fund, or use it for other

purpose or purposes; deny that said defendants, or either of them, will not apply said money to the payment of interest or to any purpose for the benefit of the holders of said bonds.

XIV.

Answering the allegations contained in paragraph seventeen of said complaint, said defendants, and each of them, deny that default in payment will be made by the said defendants, or any of them, from time to time as each installment of interest becomes due and payable, or otherwise, or at all, in any case where interest is lawfully due from said District; deny, that in order to avoid great loss and injury to plaintiff, or to any holder of said or any bonds of said District, it is necessary to have said bonds declared, without delay, or otherwise, to be the legal and valid, or legal or valid, obligation of said District, or to have appropriate process, or any process for enforcing the payment of interest or principal thereon as the same becomes due from time to time, or at any other time or at all.

XV.

Answering the allegations contained in paragraph eighteen of said complaint, these defendants deny that the officials of said District are counselling and advising, or counselling or advising the taxpayers in said District not to pay their taxes levied for the purpose of paying interest on said bonds, or otherwise; deny that said officials are making no effort to collect the payment of said taxes; deny that by their

actions, conduct and statements, or by their actions, or conduct, or statements, said officials are encouraging default in the payment of such or any taxes; deny that they are encouraging agitation or litigation against the bondholders; deny that they are fomenting a spirit of repudiation among the taxpayers, with a view of ultimately repudiating the payment of the bonds heretofore issued, together with the interest thereon, or otherwise, including the coupons held by plaintiff, as aforesaid, or otherwise; deny that they are inviting suits by taxpayers of said District, attacking the validity of such bonds, or the right of the District to pay such bonds, or the interest thereon, or otherwise; deny that said defendants by their conduct and actions, or conduct or actions, or otherwise, are greatly, or otherwise, decreasing the market value of said, or any, bonds; deny that said defendants are causing irreparable, or any, injury, to the plaintiff in the premises, or otherwise, or to other, or any, holders of the bonds of said District; deny that the said defendants, or any of them, should, in justice and good conscience, or justice or good conscience, or by law, or otherwise, be held responsible for claiming any irregularities in the issuance, delivery or sale of said bonds that could or might invalidate the same in the hands of plaintiff, or otherwise; further answering, these defendants say that they are without knowledge as to whether or not said plaintiff is a holder of said or any bonds of said District, but deny that the said plaintiff is an innocent holder, or a holder for value, or a holder

without notice and knowledge, or notice or knowledge, of any irregularities in the issuance and sale, or issuance or sale of said bonds; deny that the said defendants, or any of them, unless restrained and enjoined, or restrained or enjoined by this Honorable Court, or otherwise, will divert or appropriate, for other uses, or at all, or return to the taxpayers moneys collected as aforesaid, or otherwise, from the payment of interest on said or any bonds; and deny that they, or any of them, will allow default to be made in the steps and proceedings, or steps or proceedings, required to be taken by them in order to make legal and valid, or legal or valid, the sale of property in said District, for delinquent taxes, or otherwise, or that they will permit the taxpayers, or any taxpayer, who have paid no taxes, to wholly, or otherwise, escape the penalty of such or any default, or to escape the payment of such, or any taxes; and deny that they, or any of them, will institute or encourage proceedings to be instituted, or actions to be commenced against the District, attacking the validity of said, or any, bonds; and deny that said, or any action, by these defendants, or any of them, will render the bonds of said District, or any of them, unsalable, and will greatly, or otherwise, depreciate, or entirely, or otherwise, destroy the market value of said or any bonds, or will result in numerous, or any, suits, or long or protracted litigation, or cause great and irreparable, or great or irreparable, or any injury to plaintiff, or to any holder of the bonds of said District.

XVI.

Answering the allegations contained in amendatory paragraph nineteen of said complaint, these defendants, and each of them, deny that any bonds were at any time issued by said District, save and except as hereinafter set forth; but admit that said defendants contend that about one-fifth of the bonds purported to have been issued by the said Emmett Irrigation District, were purportedly issued and sold by said District without any consideration, as hereinafter set forth; admit that the said defendants do not state or pretend to know which of said bonds were so issued, as alleged in said paragraph nineteen, as hereinafter and for the reasons hereinafter more fully set forth.

Further answering said allegations, said defendants are informed and believe, and hence on information and belief allege, that the bonds described in plaintiff's complaint, held by him, are a portion of the bonds thus issued, without consideration, as hereinafter more fully set forth; deny that by reason of such general, vague and indefinite, or general, or vague, or indefinite charges against the outstanding bonds of said District, a cloud is thrown upon the validity or legality of all the bonds of said District so outstanding, and in this connection the said defendants are informed and believe, and hence on information and belief allege, that it is well known to holders, or purported holders, of the bonds of said District, which of said bonds were purportedly issued without any charge or any adequate consider-

ation, as hereinafter more fully set forth; deny that the market value of all said bonds of said District is greatly or generally depreciated or entirely destroyed, or otherwise destroyed, by reason of the matters set forth in said paragraph nineteen; deny that the contentions or charges set forth in said paragraph nineteen are wholly, or otherwise, unfounded, or untrue; deny that the same are made only, or at all, for the purpose of furnishing either excuse or pretense for not paying interest on all or any of the bonds issued by said District, or for defaulting in the payment of taxes therefor, or for doing any other act or thing set forth or charged against the said defendants in plaintiff's complaint; deny that as a result thereof, or for any other reason, except as hereinafter set forth, defaults are, or any default is, being made, by the taxpayers, or any taxpayers, in any of the taxes levied for the payment of interest on said, or any, bonds; deny that numerous, or any suits will be instituted by taxpayers, or any taxpayer in said District attacking the validity of such or any bonds, or attacking the assessment, or any assessment, made for the payment of interest thereon; deny that any statement or statements have, repeatedly, or otherwise, been made by officers, or any officer of said District, or by any defendant, that the District will not pay said bonds, or any bonds, unless compelled to do so by a decree or judgment of the Court, except as to bonds illegally issued, as hereinafter set forth; admit the institution of the action of Clayton B. Knox against R. B. Shaw as Treasurer

of said Irrigation District, as set forth in said paragraph nineteen.

Further answering said paragraph nineteen, these defendants are without knowledge as to whether or not the holders of said bonds are widely scattered, or whether they reside mostly if not entirely in other states than the State of Idaho, and as to whether or not they reside at such distances from said place where such suits will be brought that they could not, except by the merest chance, learn that such suits had been brought or were pending; deny that because of the attitude of said defendants toward said bonds, or otherwise, no adequate or proper defense will be made by said officers.

Further answering the allegations contained in said complaint, these defendants say, as follows, to-wit:

I.

At a special election, held in the said Emmett Irrigation District on the 3d day of December, 1910, irrigation district bonds in the total sum of $1,100,-000.00, for the purpose of providing funds for the purchase and enlargement of the irrigation system known as the Canyon Canal system, for the watering of the lands in said district, were duly authorized.

II.

That, on the 12th day of September, 1911, the Board of Directors of said Emmett Irrigation District made and entered into a certain purported contract in writing with —— Emmons and J. J. Cor-

kill, doing business under the firm name and style of J. J. Corkill & Company, a true and correct copy of which said contract, marked Exhibit "A", is attached hereto, hereby referred to and made a part hereof.

III.

That, thereafter, on the 26th day of September, 1911, the said Fort Dearborn Trust and Savings Bank, the depositary named in said purported contract, Exhibit "A", and the said J. J. Corkill & Company and said Emmett Irrigation District entered into an agreement supplemental to said contract, Exhibit "A", for the purpose of more clearly defining the duties and responsibilities of the said depositary, in which said supplemental agreement it was mutually promised and agreed by the aforesaid parties thereto that the duties of the said Bank should be limited to that of a mere depositary.

IV.

That the said Board of Directors were induced to make, and did make, said contract hereinbefore referred to by reason of and relying upon the representations of J. J. Corkill & Company that the said bonds and notes and other obligations referred to, specified in the said contract, Exhibit "A", as the various outstanding obligations of said Canyon Canal Company, were valid liens, secured by mortgage or otherwise, upon the irrigation system of said Canyon Canal Company, which was to be transferred to defendants, under the terms of said contract, and further secured by mortgage water contracts upon

the principal portion of the lands of said Emmett Irrigation District, and that said Canyon Canal Company was actually indebted in the amounts named in the said contract Exhibit "A", in the manner specified in said contract, when in truth and in fact, as defendants are informed and believe, and therefore upon information and belief allege, said bonds and notes and other outstanding obligations issued by said Canyon Canal Company, and referred to in said contract Exhibit "A", were in no way secured by any valid or subsisting lien against said irrigation system of the said Canyon Canal Company; and defendants further allege that they are informed and believe, and hence on information and belief allege, that the said bonds and notes and other outstanding obligations of the said Canyon Canal Company, referred to in said contract Exhibit "A", were valueless in the hands of the holder thereof, at the time of the execution of said contract hereinbefore referred to, and that the same were secured only by water contract mortgages executed by the owners of said lands in said irrigation district to said Canyon Canal Company, prior to the organization of said district, all of which said water contract mortgages had been violated and breached by the said Canyon Canal Company, and all of said water contracts were subject to extensive offsets, in an amount unknown to these defendants, in favor of the land owners executing the same.

Defendants are informed and believe, and hence on information and belief allege that said Corkill &

Company represented to said Board of Directors that the services of the said Corkill & Company were necessary and indispensable to said defendant in securing the exchange of the various obligations of said Canyon Canal Company, referred to in said contract Exhibit "A", by the holders thereof for the bonds of the District and in securing the transfer of the said irrigation system known as the Canyon Canal system for said bonds, and, further, that the said Corkill & Company were in position to render the said defendant valuable services in accomplishing the aforesaid transfer and exchanges, and that the said Corkill & Company were acting for and in behalf of, and in the interest of, the said defendants, all of which said representations were believed by said Board of Directors to be true, at the time said aforesaid contract was made, but all of said representations were false, and known by the said Corkill & Company to be false at the time they were made, and each and all of which were fraudulently made, with intent and purpose on the part of Corkill & Company to induce said Directors to make and enter into said contract hereinbefore referred to.

Said defendants are informed and believe, and hence on information and belief, further allege, that, at the time of the making the said aforesaid representations and of entering into said contracts, hereinbefore referred to, the said Corkill & Company, unknown to said Board of Directors, or any of them, were acting as special agents and representatives and in behalf of, and at the request of the various

holders of the aforesaid obligations of the Canyon Canal Company, referred to in said contract, Exhibit "A," and that at the time said contract was made and entered into, and at all times thereafter, the facts in this paragraph hereinbefore set forth were well known to the said holders of said obligations.

V.

That, thereafter, the then Board of Directors of said District delivered to the said Fort Dearborn Trust & Savings Bank, the depositary named in the aforesaid contract, Exhibit "A", pursuant to and under the terms and conditions of said contracts hereinbefore mentioned, certain instruments in writing, purporting to be the coupon bonds of the said Emmett Irrigation District in the total sum of $1,100,000.00, par value, exclusive of interest, $800,000.00 in amount thereof being thus deposited on or about January 3d, 1912, and $300,000.00 thereof on or about February 29th, 1912, and defendants are informed and believe, and hence on information and belief allege, that the bonds and coupons upon which said action is brought are a portion of the said bonds so deposited with the said depositary.

VI.

Defendants further allege that the said bonds, thus delivered to the said depositary were designated on their face as a single series, and, as defendants are informed and believe, and hence on information and belief allege, the entire series designated as a single issue; further, the bonds comprising said, or any issue, were not numbered consecutively, com-

mencing with those first falling due; and further, upon such information and belief, defendants allege that no portion of said purported bonds, constituting a single issue are payable, five per cent. of the whole number of bonds constituting said issue at the expiration of eleven years from their issuance, six per cent. at the expiration of twelve years from their issuance, seven per cent. at the expiration of thirteen years from their issuance, eight per cent. at the expiration of fourteen years from their issuance, nine per cent. at the expiration of fifteen years from their issuance, ten per cent. at the expiration of sixteen years from their issuance, eleven per cent. at the expiration of seventeen years from their issuance, thirteen per cent. at the expiration of eighteen years from their issuance, fifteen per cent. at the expiration of nineteen years from their issuance, or sixteen per cent. at the expiration of twenty years from their issuance, nor in any such proportions, as required by statute of the State of Idaho, and upon such information and belief, defendants further allege that the foregoing allegations are true, whether or not allowance be made so that each bond shall be in amount of $100.00 or a multiple thereof, and no bond should fall due in partial payments.

Defendants further say that all of said purported bonds were signed by the President and Secretary of the said District in office at the time the same were authorized, but none of the said purported bonds, delivered to the said depositary, are now, or at any

time have been, signed by the President and Secretary of the District in office at the time the same were delivered to the said depositary, or thereafter, and none of the coupons attached to said bonds at the time of their delivery, or at any other time, are now, or at any time have been, signed by the Secretary of said defendant District in office at the time the same were delivered to said depositary or thereafter, but that the same were signed by the Secretary in office at the time of their authorization; that neither the Secretary or Treasurer of said District has now, or at any time has had or kept, any record whatever of bonds sold, or their manner or date of sale, or price received, or the name of the purchaser; that neither the said defendant District, nor anyone in its behalf, now has, or at any time has had, or kept any record of said facts; and defendants are informed and believe, and hence on information and belief allege, that in making and procuring said contract from said Irrigation District it was the purpose and intent of the said Corkill & Company to unlawfully and fraudulently withhold and conceal from the said Irrigation District and from the landowners and taxpayers therein the identification of the different bonds contained in the classification into which said bonds were divided by said contract, Exhibit "A," as well as the names of the purchasers or receivers thereof.

VII.

Defendants further allege that they are informed and believe, and hence on information and belief allege that thereafter, during the year 1912, the exact date being to these defendants unknown, but after the 1st day of March in said year certain of the said purported bonds thus placed in the hands of the said depositary were disposed of by said depositary as follows:

(a) Approximately $600,000.00 in amount, at par value, exclusive of interest, of said purported bonds were exchanged by the said depositary for the outstanding obligations of said Canyon Canal Company, referred to in said contract, Exhibit "A."

(b) $150,000.00 in amount of the said bonds, at the par value thereof, together with the January 1st, 1912, and all subsequent maturing interest coupons attached thereto, were, after the said 1st day of March, 1912, and during said year the exact time being to these defendants unknown, delivered by the said depositary to the said J. J. Corkill & Company, without consideration, but purportedly as a bonus or premium for making the exchange of bonds for the said obligations of the said Canyon Canal Company, as hereinbefore set forth.

(c) $105,000.00 in amount of said bonds, at par value, exclusive of interest, were from time to time, after the 1st day of March, 1912, and during said year, the exact date being to these defendants unknown, delivered to said Corkill & Company for cash; and defendants further allege, upon said informa-

tion and belief, that said depositary, from time to time, as the last mentioned bonds were delivered to said Corkill & Company for cash, delivered to said Corkill & Company, in addition to the said bonds delivered for cash, purportedly as a bonus or premium for making the said exchanges of the bonds hereinbefore set forth, but actually without any consideration whatever, approximately the sum of $26,200.00 in amount of said bonds at the par value thereof.

(d) That thereafter, on or about the lst day of September, 1912, said depositary, pursuant to the mutual agreement between the said District and the said Corkill & Company, returned to the said District $25,000.00 in amount of said bonds, at their par value, exclusive of interest, which said bonds are now held and owned by the said District.

(e) That thereafter, to-wit, on or about the 5th day of April, 1913, the said Corkill & Company, pursuant to the terms and conditions of a subsequent contract, made and entered into between the said District and the said Corkill & Company, purchased from said District $20,000.00 in amount of said bonds at their par value, exclusive of interest, for cash, said bonds being a portion of the bonds then remaining in the hands of the said depositary.

VIII.

Defendants are informed and believe, and hence on information and belief allege, that $173,800.00 in amount, at par value, exclusive of interest, of said bonds originally delivered to said depositary, as hereinbefore set forth, still remain in the hands of

the said depositary, and that the said defendant, Emmett Irrigation District, has received in cash, for and on account of the $1,100,000.000 in amount of bonds deposited with the said depositary the sum of $125,000.00, and no more.

IX.

Defendants are further informed and believe, and hence on information and belief allege, that the bonds and coupons upon which this suit is brought are no part of the bonds or coupons sold or delivered for cash.

X.

Defendants further allege that the interest coupons attached to the said bonds, maturing July 1st, 1913, were paid by the Board of Directors of said District from funds raised otherwise than by taxation for the purpose of interest payment, and that no other interest or interest coupons have been paid by said District.

XI.

Defendants are further informed and believe, and hence on information and belief, allege that the said Board had no power or authority to issue said or any bonds, for any purpose, or for any consideration, other than the exchange of cash, at their par value with accrued interest; and, in this connection, that Section 12-A of a certain purported act of the Ninth Session of the Legislature of the State of Idaho, which appears in the 1907 Session Laws at page 484 to page 507, both inclusive, being Senate Bill No. 140, and purported to

have been enacted at the Ninth Session of the said State Legislature and approved by the Governor of said State on the 15th day of March, 1907, which act purports to provide, in Section 12-a thereof that, "in case of purchase the bonds of the district hereafter provided for may be used to their par value in payment," (1907 Session Laws, p. 493), is unconstitutional and void, in that the subject thereof is not expressed in the title of said Act, and it is not provided in the body of said act that the aforesaid Section 12-a thereof, shall be enacted or become a law of the State of Idaho.

XII.

Further answering, and for a further and separate defense to the plaintiff's said action, and reserving to themselves all manner of exceptions, objections and advantages on the same point as heretofore raised by said defendants on motion to dismiss the plaintiff's bill of complaint as amended, these defendants and each of them allege, that this court, sitting as an equity court and on the equity side thereof, has no jurisdiction of the cause of action, if any, of the matters and things set forth in the plaintiff's said bill of complaint, for the reason that said plaintiff has a plain, speedy and adequate remedy at law against the defendant, the Emmett Irrigation District, for judgment upon the default of coupons owned by the plaintiff with the right to enforce such judgment, if any be recovered, by writ of mandate issued from this court.

XIII.

Further answering, and for a further and separate defense to the plaintiff's said cause of action, if any, and reserving to themselves all manner of exceptions, objections and advantages to be had on this point as raised by defendant's motion to dismiss said bill of complaint, for the reasons in this paragraph hereinafter set forth, these defendants and each of them allege that the plaintiff's complaint is defective for want of, and by reason of a misjoinder of, necessary and indispensible parties, in that it is alleged in plaintiff's said complaint as amended that the bonds of said Emmett Irrigation District, described in said complaint as amended to the amount of $900,000 and upwards, together with interest coupons of like date, number, amount and maturity as the coupons described in plaintiff's complaint as belonging to the said plaintiff have been issued and are now outstanding in the hands of purchasers thereof, who reside mostly if not entirely in other states than the State of Idaho, and that the plaintiff herein is the owner of but a portion of said bonds, to-wit, the amount of $101,000, together with interest coupons thereto attached including therein interest coupons attached to said bonds held by plaintiff, representing interest due thereon on January 1st, 1914, which interest remains unpaid and aggregates the sum of $3,030.00, and the Treasurer of said District is now in possession of an interest fund belonging to said District and collected and held in trust for the payment of the coupons attached to all of said bonds outstanding,

including bonds and coupons of all holders of any portion of the said $900,000.00 of bonds issued; and defendants further allege that certain instruments purporting to be the bonds of the Emmett Irrigation District, together with interest coupons representing interest maturing January 1st and July 1st of each year thereunto attached in an aggregate amount of $900,000.00 principal or thereabouts are outstanding; that plaintiff's said bonds and coupons are a portion thereof; that said bonds and coupons were issued in the manner and for the consideration alleged in paragraphs one to ten of the affirmative matter set forth in defendant's first defense hereto, which said allegations in said ten paragraphs are hereby referred to and made a part hereof as fully as though set forth herein; further, defendants are informed and believe and hence on information and belief allege that the holders of said purported $900,000 of bonds of the said District, together with the interest coupons thereto attached, are not numerous, nor are they so numerous as to make it impracticable to bring them all before this court as parties to this action, nor will the same be attended with inconvenience, extraordinary expense or serious delay; further, as alleged in said complaint, said persons, the holders of said purported bonds and coupons are citizens and residents of states other than the State of Idaho; that said bonds, if valid bonds, are each and all a lien upon the lands within said Emmett Irrigation District and the holders of the coupons thereto attached entitled to pro

rate in the distribution of the interest fund now in the hands of said Treasurer, that if other holders of said bonds and coupons proceed to the enforcement of said bonds and coupons elsewhere than in this action numerous suits will be required involving practically the same facts and the same questions; that, as appears by the plaintiff's said bill of complaint, this suit is brought for the purpose of apportioning said interest fund now in the hands of the said Treasurer of said District and to remove a cloud from the title of said outstanding bonds whose status is in the District of Idaho Southern Division and to enforce and establish the lien of said bonds upon the lands of said District; and that, therefore, the holders of said bonds who reside outside the State of Idaho are within reach of the process of this court;that the names, citizenship and residence of each of the holders of said bonds other than the plaintiff herein and one A. N. Gaebler, whom defendants are informed and believe, and hence on information and belief allege, is a citizen of St. Louis in the State of Missouri and the holder of $53,500 of said purported bonds together with the interest coupons thereto attached, are unknown to defendants and each of them, but said defendants, and each of them are informed and believe, and hence on such information and belief allege, that the names, residence and address of each of the holders of all said $900,000 of bonds, together with the interest coupons thereto attached are known to the plaintiff, and that a committee has been appointed by the holders of each and all of said

bonds for the purpose of enforcing the purported obligation of the same together with the coupons thereto attached; and defendants and each of them are further informed and believe and hence on information and belief allege that said bonds and all of them have been deposited with said committee, the names of which said committee are unknown to defendants and each of them, but are known to said plaintiff and plaintiff's attorneys; further, on such information and belief, defendants and each of them allege that the said committee is trustee for each and all of said bondholders; that this action is instituted at the instance and request of said committee; that the said committee, acting for each and all of said bondholders, is contributing to if not entirely paying all expenses of this action.

Defendants are further informed and believe, and hence on information and belief allege that each and all of said committee are non-residents and not citizens of the State of Idaho, further, on such information and belief said committee has complete records of the names, residence and citizenship of each of the holders of said bonds and that the same are accessible to this plaintiff; that the controversy in plaintiff's complaint set forth cannot be fully and finally determined except the members of said committee and the remaining holders of said $900,000 of said purported bonds and coupons be brought in as parties to this action.

WHEREFORE, these defendants, and each of

them, pray to be dismissed with their costs in this behalf incurred.

EMMETT IRRIGATION DISTRICT,
W. H. SHANE, N. B. BARNES AND
E. J. REYNOLDS DIRECTORS,
AND R. S. SHAW, TREASURER,
EACH AND ALL
BY DEAN DRISCOLL.

RICE, THOMPSON & BUCKNER,
Residing at Caldwell, Idaho, Solicitors for Defendants.

FREMONT WOOD, AND DEAN DRISCOLL,
Residing at Boise, Idaho, Solicitors for Defendants

Service of the within and foregoing answer by receipt of copy thereof this 5th day of October, 1915, is hereby acknowledged, and consent is hereby given that the time for filing same be extended to and including Oct. 6th, 1915.

RICHARDS & HAGA,
Residing at Boise, Idaho, Attorneys for Plaintiff.

EXHIBIT "A"

THIS AGREEMENT, Made and entered into this twelfth day of September, A. D., 1811, by and between Emmett Irrigation District, a municipal corporation organized and existing under and by virtue of the laws of the State of Idaho, (hereinafter sometimes for brevity called the "District") par-

ty of the first part, and J. J. Corkill & Company, of Chicago, Illinois, parties of the second part, WITNESSETH that,

WHEREAS, the District has been organized under the laws of the State of Idaho, with the intention and purpose of acquiring, taking over and owning the irrigation system heretofore belonging to The Canyon Canal Company (the said Canyon Canal Company being hereinafter sometimes for brevity referred to as "Canal Company") located in the counties of Boise and Canyon, in the State of Idaho, which said irrigation system with the extensions contemplated, hereafter referred to, will provide for irrigation of all the lands which constitute a part of the District, and,

WHEREAS, in pursuance of such intent and purpose, the District desires to purchase the property of the said The Canyon Canal Company and that said parties of the second part are able to sell and to deliver to the District the said properties, all subject to the terms and conditions hereinafter set forth, and,

WHEREAS, the properties of the said Canyon Canal Company are subject to the following outstanding obligations:

First: $170,000 par value in amount of Six Per Cent First Mortgage Gold Bonds, dated June 15, 1915, (said bonds being the unpaid portion of a total issue of $350,000, par value in amount) which are due serially from July 1st, 1912, to July 1st, 1916, and which are secured by a mortgage bear-

ing even date with the said bonds to the American Trust and Savings Bank, a corporation of Illinois, as Trustee, and also by the deposit with said Trustee of first mortgage contracts constituting liens on lands irrigated by means of the said irrigation system and lying within the District, upon which contracts there was on May 1st, 1911, a total of $227,603.54 principal, and $38,094.08 interest unpaid.

Second: $100,000 par value in amount of second mortgage collateral trust bonds issued by the said Canal Company, dated July 1st, 1906, which are due July 1st, 1916, bear interest at six per cent (6%) per annum and are secured by a "Collateral Trust Mortgage" bearing even date with the said bonds to the said The American Trust and Savings Bank as Trustee, on which said bonds no interest has been paid and the said bonds are therefore in default and subject to foreclosure.

Third: $100,000 par value in amount of notes of the said Canal Company, dated December 15, 1908, due December 15, 1910, bearing interest at six per centum (6%) per annum, and secured by the deposits under a collateral trust agreement with the said The American Trust and Savings Bank as Trustee, of certain mortgage contracts constituting liens on lands irrigable from the said irrigation system and constituting a part of the District on which said mortgage contracts there was on May 1st, 1911, a total of $101,111.10 principal and $17,310.97 interest remaining unpaid, which said notes are in default and therefore subject to foreclosure.

Fourth: $200,000 par value in amount of notes of the said Canal Company, dated May 1st, 1909, bearing interest at six per cent (6%) per annum, of which $100,000 are due February 1st, 1912, and $100,000 are due February 1st, 1913, and which are secured by the deposit under a trust agreement with the said The American Trust and Savings Bank as Trustee, dated April 20, 1909, of other similar mortgage contracts on which there were on the first day of May, 1911, $196,754.98 principal and $21,463.11 interest remaining unpaid, on which said notes no interest has been paid since February 1st, 1911, and said notes were, therefore in default and subject to foreclosure, and

WHEREAS, in addition to the mortgage contracts in the hands of the said The American Trust and Savings Bank to secure the respective issue of bonds and notes above described, there is in the hands of the said Trustee cash collected on said mortgage contracts as follows, namely: $6,994.09 collected on contracts securing the first mortgage bonds of June 15, 1905; $4,966.63 collected on the said mortgage contracts deposited as collateral for the said notes, dated December 15th, 1908; $16,-237.22 collected on contracts deposited as collateral for the said notes, dated May 1st, 1909, and

WHEREAS, the District has heretofore by proper proceedings had according to law, authorized the execution and sale of bonds of the District to the total of $1,100,000, said bonds to bear interest at the rate of six per cent (6%) per annum, to be dated

January 1st, 1911, and to become due serially in the manner provided by the laws of the State of Idaho, which said bonds the said District desires to sell and use for the purpose of purchasing the properties of the said Canal Company; retiring all of the outstanding bonds and notes of the Canal Company, paying all valid and outstanding existing liens, charges and claims against the property of the said Canal Company, so that the said property may be held by the District free and clear of all liens whatsoever and to furnish funds for the extension of the said irrigation system and for the completion thereof, so as to constitute a complete irrigation system for the irrigation of all the lands contained in the District, and

WHEREAS, the said parties of the second part are able and are willing to assist the District in exchanging the bonds of the District for the said outstanding notes and bonds of the Canal Company, and also are willing to purchase the remainder of said bonds over and above those that are necessary to be used in affecting such exchange; NOW, THEREFORE, the said parties have agreed as follows:

Section 1. The said parties of the second part agree to use their best efforts with the holders of the outstanding bonds and notes of the said Canal Company and with the members of the committees heretofore organized for the protection of the above mentioned defaulted notes of the Canal Company in order to affect the complete exchange of the said

notes for the said bonds of the District and thereby to obtain the release of the above mentioned mortgages and collateral deposited as security for the said bonds and notes as above set forth.

Section 2. At or before the time when the District shall deposit with Depositary hereinafter named the bonds of the said District to be disposed of as hereafter set forth, the said parties of the second part are to transfer or cause to be transferred to the District (subject only to the liens of the said outstanding bonds and notes of the Canal Company and of the liens hereinafter mentioned) the entire irrigation system of the Canal Company, the said parties of the second part will also assign or cause to be assigned the unsecured claim or claims against the Canal Company held by Trowbridge & Niver Company. All necessary deeds and assignments to carry out the above mentioned transfers are to be executed and deposited by said parties of the second part with the Fort Dearborn Trust and Savings Bank of Chicago, Illinois, hereinafter referred to as the "Depositary," with instructions to deliver the same to the District or its order, upon the deposit by the District with the said Depositary of the said $1,100,000.00 of District bonds (with the written opinion of Adams & Candee, Attorneys of Chicago, Illinois, approving the legality of the said bonds as hereinafter provided) in accordance with the terms of this agreement.

Section 3. The parties of the second part further agree that when the exchange of the said District

bonds for the said outstanding bonds and notes of the Canal Company shall have been completed and all of the notes and bonds of the Canal Company shall have been retired by means of such exchange, or in payment or otherwise, the said parties of the second part will then execute a proper assignment or assignments transferring and assigning to the said District all of the mortgage contracts and cash held by the said The American Trust and Savings Bank (now the Continental and Commercial Trust & Savings Bank) as Trustees, under the above mentioned mortgages and trust agreements. The said mortgage contracts amounted, (according to the statement of said Trustee), on or about May 1st, 1911, to the sum of $525,469.62 principal, and $76,868.16 interest (the said amounts being the amounts of principal and interest respectively, remaining unpaid upon said mortgage contracts) and the cash in the hands of the Trustee amounting (according to said statement) to $28,197.94, making a total of $630,535.72 of principal, interest and cash so to be transferred to the District. Such transfer and assignment shall be in such form as the District may request and shall authorize and direct the said Trustee to turn over to the District all such contracts and cash then remaining in its hands.

The parties of the second part will also at the same time execute or cause to be executed and deliver to the Depositary for delivery to the District an assignment of all of the right, title and interest now held and owned by Trowbridge & Niver Com-

pany in and to any of the stock of the Canal Company. Such assignment shall be made to a Trustee or Trustees named by the District in such manner as to enable the said Trustee or Trustees to control the Canal Company from that time forth in order that the property of the said The Canyon Canal Company may be fully and completely transferred to the District and that the Canal Company may be wound up, dissolved or otherwise disposed of as the District may desire and determine it being the intent hereof, that after the execution of such transfers which shall be made as soon as may be after the completion of the exchange and retirement of the outstanding bonds and notes of the Canal Company. The Canal Company and all of its property shall be wholly subject to the control of the District.

Section 4. The District agrees to deposit with the Depositary the entire issue of its said bonds amounting to $1,100,000; said bonds are dated as above stated, January 1st, 1911, and bear interest at the rate of six per cent (6%) per annum, and mature serially in installments in the manner provided by the Statutes of the State of Idaho. The coupons attached to said bonds and maturing July 1st, 1911, are to be detached by the District prior to the deposit of the said bonds with the said Depositary.

Section 5. The said Depositary is to hold and shall be instructed to hold the bonds of the District so deposited with it and to deliver the same as follows:

(a) $470,000 in amount of the said bonds are to be held by the Depositary and delivered from time

to time to the parties of the second part or their order, upon the surrender of any of the above mentioned bonds, dated June 15, 1905, or notes dated December 15, 1908, or notes dated May 1, 1909; the par value of the bonds of the District so to be delivered to be equal to the par value of the above mentioned bonds and notes so surrendered.

The accrued interest on all of the above mentioned outstanding bonds and notes will at all times exceed the accrued interest (since July 1, 1911) on the bonds of the District to be delivered in exchange therefor. The accrued interest on the bonds of the District is to be allowed as a credit on the accrued interest of the aforesaid bonds and notes so surrendered and the accrued interest on the aforesaid bonds and notes so surrendered in excess of the accrued interest on the bonds of the District delivered in exchange therefor, shall be paid in cash by the parties of the second part to the persons surrendering such bonds and notes for such exchange; provision being hereinafter made for the reimbursement of the said parties of the second part for the amount of the accrued interest so expended by them.

(b) $130,000 par value in amount are to be delivered from time to time to the parties of the second part or their order, upon the surrender of the said $100,000 of second and collateral trust bonds; the par value of the District bonds so delivered to equal the par value of the said notes so surrendered together with accrued interest thereon to July 1st, 1911, (the total interest accrued on such notes to July 1st, 1911,

amounting to the sum of $30,000). The parties of the second part are to make arrangements with the persons surrendering such notes for the necessary adjustment of the uneven amounts due to them respectively.

(c) Upon the execution in favor of the District of the above transfers and assignments mentioned above in Section 2 hereof, and upon the deposit of said papers with the Depositary, the parties of the second part shall be entitled to receive $220,000 par value in amount of the said bonds with the January 1st, 1912, and all subsequent coupons attached thereto, but the said $220,000 par value in amount of bonds shall be held by the Depositary as security for the compliance by the parties of the second part with the terms of this contract and delivered to them as hereinafter set forth.

(d) The remaining $280,000 in amount of the said bonds shall be delivered by the Depositary to the parties of the second part upon the payment of cash equal to the par value of the said bonds plus accrued interest thereon to the date of delivery.

Section 6. Said parties of the second part agree to use their best efforts to exchange the said outstanding bonds and notes of the Canal Company for the District bonds set aside therefor as aforesaid. The said parties of the second part further agree that they will purchase the $280,000 in amount of the District bonds referred to in paragraph (d) of the preceding section, as follows, namely: $50,000 within thirty days after the bonds are delivered to

the Depositary (with the opinion of Adams & Candee approving the same as hereinafter provided); $50,000 within sixety days after such deposit, and $50,000 within ninety days after such deposit, and the remaining $130,000 on or before August 1st, 1912. Iu order to insure the performance of these obligations by the parties of the second part, the said $220,000 of bonds of the District referred to in paragraph (c) of the preceding section of this agreement, are to be held by the Depositary as security and are to be delivered to the parties of the second part as the said outstanding bonds and notes of the Canyon Canal Company are surrendered to the Depositary and as the said bonds of the District which are to be purchased in cash by the parties of the second part are taken up by them, said Depositary is and shall be in writing authorized to deliver to the parties of the second part, or their order, bonds of the District (being bonds referred to in paragraph (c) of Section 5 hereof), equal to twenty-five per cent (25%) of the amount of the outstanding bonds and notes of the Canal Company so surrendered, the bonds of the District to be delivered by the Depositary to the said parties of the second part, or their order, as such bonds are surrendered from time to time, and as the District bonds referred to in paragraph (d) are taken up and paid for by the parties of the second part, the said Depositary is and shall be in writing authorized to deliver to the parties of the second part, additional bonds of the District (being bonds

referred to in paragraph (c), equal to twenty-five per cent (25%) of the par value of the bonds so taken up and paid for in cash by the parties of the second part; it being the intent hereof that the said Depositary shall retain in its hands as a guaranty and a security for the performance of the agreements in this section provided to be performed by the parties of the second part, bonds belonging to the parties of the second part and equal to twenty-five per cent (25%) of the said outstanding bonds and notes of the Canal Company remaining unsurrendered and of the bonds of the District remaining unpaid for by the parties of the second part, and that all the remainder of said $220,000 of bonds shall be delivered to the parties of the second part on demand.

Section 7. It is further understood and agreed that the property of the Canal Company is subject to certain outstanding liens for labor, materials and work, said liens being described in detail in a list hereto attached and marked "List of Outstanding Contractors' and Laborers' Liens against the properties of the Canyon Canal Company." It is understood that the validity of some of the said liens is disputed by both of the parties hereto nothing herein contained shall be construed as an acknowledgment of the validity of the said liens nor as an agreement to pay the same nor any part thereof until the same shall have been fully adjudicated to constitute a valid and existing claim against the Canal Company and a valid and existing lien against its property, but in order that the title to the said

properties may be ultimately acquired by the District free from all such liens and in order that such properties may be owned by the District free and clear of all liens for the benefit of the District and of the holders of the said District bonds, the said Depositary shall be in writing directed to hold out of the proceeds of the said bonds which are to be paid for in cash by the parties of the second part, the sum of $110,000, the said sum to be held as security for the payment of such outstanding liens as may be determined by the District or finally adjudged to be a valid claim and lien, and shall be authorized to pay to the holders of such liens in satisfaction thereof, such amounts as may be directed by the District and by the parties of the second part, and when all such liens shall have been paid in full or satisfied, the said Depositary shall pay over to the District any balance of said sum then remaining in its hands. The proceeds of said bonds in excess of the said sum of $110,000 shall be paid by the Depositary to the District on demand.

Section 8. As hereinbefore stated, upon the exchange of any of the outstanding bonds and notes of the Canal Company, the coupons attached to the bonds of the District to be delivered in exchange therefor, shall be delivered in payment of the accrued interest on such outstanding bonds and notes of the Canal Company since July 1st, 1911. All accrued interest on said bonds and notes prior to that date (except the accrued interest on $100,000 of second and collateral trust bonds, dated July 1st, 1906) shall be paid in cash by the parties of the second part;

such payment to be construed as an advancement to the District. Upon the release by the said The American Trust and Savings Bank of any of the cash now held by it as Trustee under any of the above mentioned trust deeds or trust agreements; out of such cash the parties of the second part are to be reimbursed for all such accrued interest so paid by them. If prior to the payment of such cash to the Depositary, the parties of the second part have heretofore paid any accrued interest on the bonds and notes theretofore surrendered, the amount of such payment shall thereupon be by the Depositary paid to the parties of the second part and the Depositary is and shall be in writing authorized thereafter to pay out of such cash, such accrued interest on the notes and bonds thereafter surrendered to it for exchange.

If the amount of all such cash eventually paid by The American Trust and Savings Bank to the said Depositary shall not equal the accrued interest on the said outstanding bonds and notes (except the second and collateral trust bonds of July 1st, 1906) and shall therefore be insufficient to pay the sums or fully reimburse the parties of the second part for such payment, then after the retirement of all such outstanding bonds and notes, the District agrees to pay to the parties of the second part all accrued interest paid by them in excess of the amount of such cash.

Section 9. The District is to furnish to the parties of the second part a complete certified record of all of the proceedings relative to the organization of the District and the authorization of the said bonds and

the confirmation of said proceedings by order of the court. Such proceedings are to be examined by Adams & Candee, attorneys of Chicago, Illinois, and the obligations of the parties of the second part under this contract are conditional upon the approval of the legality of said bonds by said Adams & Candee, and the giving of a written opinion approving the legality of the said bonds by the said Adams & Candee.

The District is to procure from each and every person owning land within the said District a waiver of errors; such waiver of errors shall be prepared by the said Adams & Candee and shall include a waiver of all errors in proceeds relative to the organization of the said District and the issuance of the said bonds and shall consent to the levy of a tax to pay the principal and interest upon said bonds in the manner provided and intended to be provided by the laws of the State of Idaho. regardless of the constitutionality of the act under which said proceedings were had and such levy made or any provisions of such act.

Section 10. In case the said parties of the second part shall fail to procure the exchange of all the said outstanding bonds and notes of the Canal Company prior to the time when the same shall be due, the parties of the second part shall take up and pay for in cash bonds of the District deposited under paragraph (a) of Section Five hereof, equal to the amount of such outstanding bonds and notes so becoming due and shall pay therefor in cash at par and accrued interest. If the said parties of the second part

shall fail to take up said bonds as above provided in order to furnish funds for the payment of the bonds of the Canal Company as the same become due (unless the same shall have been retired prior to such maturity), then in that event the District is hereby authorized to sell bonds of the District deposited with the Depositary referred to in paragraph (a) and (b) of Section Five hereof to the par amount of such bonds and notes of the Canal Company so becoming due, and in addition thereto the District is further authorized to sell such of the bonds mentioned in paragraph (c) of said Section 5 hereof, as may be necessary in order to provide funds to meet and pay the said bonds and notes of the Canal Company so becoming due, not exceeding, however, twenty-five per cent (25%) of the par amount of such bonds and notes so becoming due. It is, however, understood and agreed that the provisions of this section do not and shall not apply to the payment of any of the said outstanding bonds and notes on which there is now default in the payment of principal.

Section 11. The form of the bonds of the District hereinabove referred to shall be subject to the approval of the said Adams & Candee. The District is to pay all of the expenses of lithographing the said bonds and of preparing the certified copy of the records of the proceedings herein above in Section 9 referred to.

Section 12. The District covenants and agrees that all funds derived from the sale of its bonds above mentioned in excess of such funds as shall be

needed to retire the outstanding liens referred to in Section 7 hereof, shall be used and applied by it only in the improvement and extension of the said irrigation system.

Section 13. The above mentioned recitals, statements and agreements relative to the amount of mortgage contracts and cash now in the hands of the Continental and Commercial Trust and Savings Bank (formerly the American Trust and Savings Bank) are based on a statement made by the said bank on or about May 1st, 1911, such statement is accepted by both of the parties hereto as a true and correct statement and all risk of error or other incorrectness in said statement is assumed by the parties hereto each for itself or themselves; it being the understanding that no representation has been made by either of the parties hereto as to the truth or falsity of the said statement other than is contained in said statement itself.

Section 14. The said outstanding bonds and notes of the Canal Company which shall be surrendered by the said Depositary for exchange or otherwise, as above provided, are to be delivered by the Depositary to the Trustee under the respective mortgages and trust agreements securing the same, above mentioned for cancellation by said Trustee.

Section 15. The interest accruing on the bonds of the District deposited with the said Depositary and referred to in paragraph (a) and (b) of Section Five hereof, is to be paid by the District as the coupons attached to the said bonds become due. Such interest is to be used by the Depositary in pay-

ment of interest on the said outstanding bonds and notes of the Canal Company as the same becomes due, but not under any circumstances in payment of any interest on such bonds and notes which is now past due. All such interest on District bonds which shall be paid to the Depositary in excess of amounts paid out by it for the purpose of paying the interest on the notes and bonds of the Canal Company as aforesaid, shall be held and used by it in the payment of accrued interest on such bonds and notes when and as the same are finally surrendered or paid; it being the intent hereof, that all interest accruing on the outstanding bonds and notes of the Canal Company since July 1st, 1911, shall be taken care of and ultimately paid by means of the coupons attached to the District bonds and the interest coming due thereon.

IN WITNESS WHEREOF, the said EMMETT IRRIGATION DISTRICT has by authority of the Board of Directors caused this instrument to be signed by its President and attested by its Secretary, under its corporate name and seal and the said parties of the second part hereunto set their hand and seal the day and year first above written.

EMMETT IRRIGATION DISTRICT,
(Signed) By W. E. BELL,
(Seal) President.
Attest: HARRY S. WORTHMAN,
Secretary.
J. J. CORKILL & CO. (Seal)

Endorsed. Filed Oct. 5, 1915.
A. L. Richardson, Clerk.
By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 479.

STIPULATION ADMITTING ADDITIONAL PARTIES

IT IS HEREBY STIPULATED AND AGREED:

(1) That A. N. Gaebler of St. Louis, Missouri, Helen M. Conrad of Ann Arbor, Michigan, S. H. Hudson of Benson, Minnesota, Henry M. Williams of Boston, Massachusetts, Charlotte H. Shipman of Hastings, Iowa, F. W. Horton of SanDiego, California, Mary C. Waddell of Albany, New York, J. Willis Gardner of Quincy, Illinois, Chester County Trust Company (a corporation) of West Chester, Penn., Lincoln University (a corporation) of Oxford, Penn., and the National Bank of Oxford (a corporation) of Oxford, Penn., claiming to be holders of bonds issued by the defendant Emmett Irrigation District of the issue described in the bill of complaint herein, may be made parties plaintiff in said action with the same right and standing in said suit as if they had been co-plaintiffs therein from the commencement of such suit, and that the complaint herein may be amended accordingly and in such other respects as the said parties may be advised.

(2) That all depositions heretofore taken and all stipulations heretofore entered into and all orders and proceedings heretofore made or had in this cause, shall apply to the parties hereby admitted as plaintiffs in said suit as fully and to the same extent as if said parties had been plaintiffs herein since the commencement of this suit and had been specially named

or included in such stipulations, orders or proceedings.

(3) That the full title of said cause (after the name and title of the Court) shall be J. Paul Thompson, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and The National Bank of Oxford, a corporation, for themselves and all other bondholders of Emmett Irrigation District similarly situated, plaintiffs, versus Emmett Irrigation District, a municipal corporation, W. H. Shane, N. B. Barnes and E. J. Reynolds, as directors, and R. B. Shaw, as treasurer of said Emmett Irrigation District, defendants; but in all future pleadings and proceedings, such title may be abbreviated in accordance with the usual practice.

(4) That the allegations of the amended bill of complaint as to the purchase and ownership of said bonds by the new parties above named and as to the rights of such parties as holders of bonds of said Emmett Irrigation District shall be deemed denied, to the same extent and as fully as similar allegations of the original bill of complaint are denied in the answer heretofore filed by the said defendants, and the said defendants shall not be required to further answer the bill of complaint herein as amended, but the answer heretofore filed with the foregoing stipulation may stand as the answer of the defendants thereto; provided, that the said defendants may, within ten

(10) days after service of such amendment to the bill of complaint, file an amended or supplemental answer, answering any allegation in such amendment to which said defendants may be advised it is necessary for them to make further answer.

(5) That upon the filing of such amendment to the bill of complaint, this stipulation and such amended or supplemental answer, if any be filed by said defendants, the cause shall be deemed at issue, and the parties shall have the right to make further depositions and testimony in accordance with the provisions of the statutes of the United States and the Equity Rules.

Dated this 1st day of July, 1916.

RICHARDS & HAGA,
McKEEN F. MORROW,
Residence: Boise, Idaho.

Solicitors for J. Paul Thompson, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, Lincoln University, and the National Bank of Oxford.

WOOD, DRISCOLL & WOOD,
Residence: Boise, Idaho.
Solicitors for Defendants.

Endorsed. Filed July 7, 1916.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)

ORDER MAKING A. N. GAEBLER, ET AL, CO-PLAINTIFFS.

A. N. Gaebler and other holders (hereinafter named) of bonds of the Emmett Irrigation District, having presented their petition to be made co-plaintiffs, and it appearing that the plaintiff, J. Paul Thompson, brought said suit for himself and all other holders of bonds of said district who might desire to join in said cause and pay their proper proportion of the costs therein, and it further appearing that the defendants have stipulated and agreed in writing that said petitioners may be made parties plaintiff herein with the same right and standing in said suit as if they had been co-plaintiffs therein from the commencement of such suit, and that the complaint be amended accordingly, and in such other respects as the parties may be advised, and good cause appearing therefor,

It is ordered that the petitioners, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and National Bank of Oxford, a corporation, be and the said parties hereby are made co-plaintiffs, and each of them hereby is made a co-plaintiff in said suit with the same right and standing in said suit as if they had been named co-plaintiffs therein from the commencement thereof.

And, it is further ordered that the said parties so admitted as co-plaintiffs may file such amendment

or amendments to the complaint herein as they may be advised.

Dated July 7, 1916.

FRANK S. DIETRICH,
District Judge.

Endorsed. Filed July 7, 1916.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 479.

AMENDMENTS TO BILL.

NOW COME the plaintiffs, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and National Bank of Oxford, a corporation, with the consent of J. Paul Thompson, the original plaintiff, and under leave of Court first had and obtained, and file the following amendments to the bill of complaint as amended, herein:

First: By inserting between Paragraph I and Paragraph II of said bill a paragraph to be numbered I-a, and reading as follows:

"That the plaintiff A. N. Gaebler is a citizen and resident of the State of Missouri, residing in the City of St. Louis, said State; that the plaintiff Helen M. Conrad is a citizen and resident of the State of Michigan, residing in the City of Ann Arbor, said State; that the plaintiff S. H. Hudson is a citizen and resident of the State of Minnesota, residing in the City

of Benson, said State; that the plaintiff Henry M. Williams is a citizen and resident of the State of Massachusetts, residing in the City of Boston, said State; that the plaintiff Charlotte H. Shipman is a citizen and resident of the State of Iowa, residing in the City of Hastings, said State; that the plaintiff F. W. Horton is a citizen and resident af the State of California, residing in the City of San Diego, said State; that the plaintiff Mary C. Waddell is a citizen and resident of the State of New York, residing in the City of Albany, said State; that the plaintiff J. Willis Gardner is a citizen and resident of the State of Illinois, residing in the City of Quincy, said State; that the plaintiff Chester County Trust Company is a corporation organized under the laws of Pennsylvania and a citizen of said State, with its principal office in the Town of West Chester, State of Pennsylvania; that the plaintiff Lincoln University is a corporation organized under the laws of the State of Pennsylvania and a citizen of said State, with its principal office in the Town of Oxford, said State; and that the plaintiff National Bank of Oxford is a corporation organized under the National Bank laws of the United States, with its office and principal place of business in the Town of Oxford, said State, and is a citizen of the State of Pennsylvania."

Second: By inserting between Paragraphs XI and XII of the original bill herein, a paragraph to be numbered XI-a, and reading as follows:

"That relying upon the facts set forth in Paragraph XI of the bill as to the issuance of said bonds by said Emmett Irrigation District and the legality

thereof, and having been advised that the said District had been legally organized and that said bonds had been legally authorized and were the valid and binding obligations of said District, and relying also upon the recitals contained in said bonds that the same had been issued in compliance with the laws of the State of Idaho and that all things required to make the same the legal, valid and binding obligations of said District had been done and had happened and been performed, and that all real property included in said District was subject to the levy of an annual tax for the payment thereof, and without knowledge or notice of any fact whatsoever impairing the validity of said bonds, or any of them, these plaintiffs purchased prior to January 1st, 1914, for a valuable consideration the bonds of said District issued as aforesaid and as set forth in said Paragraph XI, to the amount and of the denominations and numbers as hereinafter set forth, and these plaintiffs now are and ever sincehave been the owners and holders respectfully of said bonds, to-wit:

(a) That the said A. N. Gaebler purchased and is the owner of said bonds to the amount of $47,500.00, par value, being bonds numbered D-298, D-345 to D-353, inclusive, D-383 to D-387, inclusive, D-493 to D-497, inclusive, D-598, D-637 to D-643, inclusive, D-789 to D-800, inclusive, D-850 to D-855, inclusive, D-987 to D-998, inclusive, D-1033 to D-1044, inclusive, D-1055 to D-1058, inclusive, D-1300 to D-1304, inclusive, D-1383 to D-1396, inclusive, D-1399 to D-1400, inclusive, being ninety-five bonds, each of the denomination of $500.00;

(b) The said Helen M. Conrad purchased and is the owner of said bonds to the amount of $2,000.00, par value, being bonds numbered D-90, D-91, D-144 and D-145, each of the denomination of $500.00;

(c) The said H. S. Hudson purchased and is the owner of said bonds to the amount of $4,000.00, par value, being bonds numbered M-124 and M-125, each of the denomination of $1,000.00, and bonds numbered D-779, D-849, D-1031 and D-1492, each of the denomination of $500.00;

(d) The said Henry M. Williams purchased and is the owner of bonds to the amount of $1,000.00, being bond numbered M——;

(e) The said Charlotte H. Shipman purchased and is the owner of said bonds to the amount of $1,000.00, being bond numbered M——;

(f) The said F. W. Horton purchased and is the owned of said bonds to the amount of $5,000.00, par value, being bonds numbered M-138 to M-142, inclusive, each of the denomination of $1,000.00;

(g) The said Mary C. Waddell purchased and is the owner of said bonds to the amount of $1,000.00, par value, being bond numbered M-228;

(h) The said J. Willis Gardner purchased and is the owner of said bonds to the amount of $7,000.00, par value, being bonds numbered M-88, M-89 and M-112, each of the denomination of $1,000.00, and bonds numbered D-547 to D-550, inclusive, and D-691 to D-694, inclusive, each of the denomination of $500.00;

(i) The said Custer County Trust Company purchased and is the owner of said bonds to the amount

of $10,000.00, being bonds numbered D-569 to D-578, inclusive, and D-717 to D-726, inclusive, each of the denomination of $500.00;

(j) The said Lincoln University purchased and is the owner of said bonds to the amount of $5,000.00, par value, being bonds numbered D-583 to D-592, inclusive, each of the denomination of $500.00;

(k) The said National Bank of Oxford purchased and is the owner of said bonds to the amount of $10,000.00, par value, being bonds numbered D-559 to D-568, inclusive, and D-707 to D-716, inclusive, each of the denomination of $500.00.

That the interest accruing on said bonds as evidenced by interest coupons thereto attached as aforesaid, maturing January 1st and July 1st of each year to and including the year 1913 has been paid but no interest has been paid thereon since the 1st day of July, 1913, and the interest coupons attached to said bonds and maturing January 1st, 1914, July 1st, 1914, January 1st, 1915, July 1st, 1915, January 1st, 1916, and July 1st, 1916, have not been paid, and the said defendants have failed, neglected and declined to pay the same or any thereof, and have levied no tax since the month of October, 1913, for the payment of interest on any of said bonds, and have failed, neglected and declined to carry out any of the obligations by them to be kept and performed, except as alleged in said original bill, relative to the levy and collection of taxes for the payment of interest on said bonds or for the benefit or protection of the holders thereof."

Third: These plaintiffs hereby adopt the following paragraphs of the original bill as amended, and pray that they may have the same benefit thereof as if said paragraphs were herein set forth at large with the necessary changes of the singular to the plural, to-wit: Paragraphs I to X, inclusive, Paragraph XII, Paragraph XIV, Paragraph XV except the allegation that the interest coupons were presented to the Treasurer of the District on the 9th day of January, 1914; the demand on the Treasurer by these plaintiffs for the payment of the interest coupons owned by these plaintiffs having been made at various times prior to the 1st day of July, 1916, and Paragraph XVI (as amended) to Paragraph XIX, inclusive; and these plaintiffs pray that they may each have the relief prayed for in the original bill.

A. N. GAEBLER,
HELEN M. CONRAD,
S. H. HUDSON,
HENRY M. WILLIAMS,
CHARLOTTE H. SHIPMAN,
F. W. HORTON,
MARY C. WADDELL,
J. WILLIS GARDNER,
CHESTER COUNTY TRUST COMPANY,
LINCOLN UNIVERSITY,
NATIONAL BANK OF OXFORD,
By RICHARDS & HAGA,
McKEEN F. MORROW,
Their Solicitors.

OLIVER O. HAGA,
Of Counsel.

United States of America,
District of Idaho,
County of Ada.—ss.

Oliver O. Haga, being first duly sworn, deposes and says: That he is one of the solicitors for the plaintiffs above named; that he has read the foregoing amendment to the bill of complaint and knows the contents thereof, and believes the same to be true; that he makes this affidavit and verification for and on behalf of the said plaintiffs for the reason that said plaintiffs are, and each of them is, absent from said District; and this deponent further says that he has obtained his information relative to the matters set forth in said amendments from official records, letters and other communications received concerning such matters, and from sources which he believes to be reliable.

OLIVER O. HAGA.

Subscribed and sworn to before me, this 7th day of July, 1916.

EDNA L. HICE,
(Seal) Notary Public.

Service of the foregoing amendments and receipt of copy thereof, admitted this 7th day of July, 1916.

WOOD, DRISCOLL & WOOD,
Solicitors for Defendants.

Endorsed: Filed July 7, 1916.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 479.

STIPULATION.

It is hereby stipulated and agreed by and between Richards & Haga, solicitors for the plaintiffs above named, and Rice, Thompson & Buckner, and Wood, Driscoll & Wood, solicitors for the defendants in said action, and each of them:

I.

That the first paragraph of said plaintiffs' amendments to the bill in the above entitled cause, filed July 7, 1916, being paragraph I-a of said bill as amended, the allegations contained in the second paragraph of the said amendments to said bill, being paragraph XI-a of said bill as amended, are each and all deemed denied to the same extent and effect as had defendant filed amended answer specifically denying each and all the allegations therein contained.

II.

That paragraph seven of the original answer in said action shall be amended as follows, to-wit:

(a) By inserting the words "or coupons", after the word "bonds" in line three thereof, and by adding to said paragraph seven of said answer the following: "deny that said, or any, bonds were thereupon, or at any other time or at all, issued and sold, or issued or sold by the said District in the manner in such cases, or any case, made or provided by the laws of the State, or otherwise, or at all, except as hereinafter set forth; deny that the proceeds of

said, or any, bonds were received and used by said District in the purchase of irrigation works, water rights and property, or irrigation works, or water rights, or property, required or deemed necessary by, the board of directors of said District for carrying out the plans formulated by said board, as alleged in paragraph X of said complaint, for the purpose of furnishing water for irrigating the lands, or any land, situated within the boundaries of said District, or otherwise, or at all, save and except as hereinafter set forth, and denies that said District received any proceeds from said or any bonds, except as hereinafter set forth."

III.

That paragraph eight of said answer be amended by adding after the word "sum" in line 9 on page 4 of said answer, the words, "or at all".

IV.

By striking out the first five lines and the word "connection" in line six of paragraph 11, on page 18 of said answer.

V.

That said answer, as amended, including not only the denials therein but all of the affirmative matter therein contained, and each and all the separate defenses therein set forth, shall stand as the answer of each and all the defendants to the said complaint as amended, and as the answer to each and all the parties plaintiff, including the parties plaintiff added by amendment, each and all of the defenses therein pleaded as to the original plaintiff, J. Paul Thomp-

son, and all the issues presented as to said original plaintiff, to be deemed pleaded as to each and all of said plaintiffs, the necessary changes from singular to plural and as to names, numbers and amounts to be deemed made.

It being the intention of this stipulation to waive filing of amended answer to said complaint as amended and to present the same issues to each and all said plaintiffs brought in by amendment of said complaint as are raised as to said J. Paul Thompson the original plaintiff, by the original answer on file herein, as herein amended.

RICHARDS & HAGA,
Residence, Boise, Idaho,
Solicitors for Plaintiffs.
RICE, THOMPSON & BUCKNER,
Residence, Caldwell, Idaho, and
WOOD, DRISCOLL & WOOD,
Residence, Boise, Idaho,
Solicitors for Defendants.

Endorsed: Filed Aug. 17, 1916.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)
No. 479.

INTERROGATORIES FOR DISCOVERY BY PLAINTIFF OF FACTS AND DOCUMENTS MATERIAL TO DEFENSE.

Comes now each and all the defendants above named, each and all of whom have heretofore filed a joint answer in the above entitled cause, by J. M.

Thompson, Fremont Wood and Dean Driscoll, their Solicitors of record, and propound the interrogatories hereinafter set forth for discovery by the above named plaintiffs, J. Paul Thompson, A. E. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte M. Shipman, F. W. Horton, Mary C. Waddell, and J. Willis Gardner of facts and documents necessary to the defense of said cause, pursuant to Rule 58 of the Rules of Practice of the Courts of Equity of the United States.

INTERROGATORY No. 1.

From whom did you purchase the bonds of which you are alleged to be the owner in the amended bill of complaint herein, and when did you purchase them?

INTERROGATORY No. 2.

What consideration did you pay for said bonds and in what way did you pay for them, in cash or the exchange of other property?

INTERROGATORY No. 3.

If the bonds referred to in the above interrogatories were purchased by you upon different occasions, give the date of each purchase and the amount paid and method of payment for each said purchase.

INTERROGATORY No. 4.

If you have already answered that you exchanged other property for these, or any of these bonds, describe the property thus exchanged, the amount and number of the bonds for which such property was exchanged.

INTERROGATORY No. 5.

State whether or not you were the owner of any of the bonds or notes of the Canyon Canal Company.

INTERROGATORY No. 6.

If your answer to the last interrogatory is in the affirmative, you may state whether or not you exchanged such bonds or notes for the bonds of the defendant, Emmett Irrigation District.

INTERROGATORY No. 7.

If you have answered that you exchanged bonds or notes of the Canyon Canal Company for the bonds of the Emmett Irrigation District, you may give the numbers and denominations of the bonds of the defendant Emmett Irrigation District which you took in exchange, and you may state in the same connection by what means such exchange was effected.

INTERROGATORY No. 8.

If you have answered that you exchanged bonds and notes, or bonds or notes, of the Canyon Canal Company, through the Fort Dearborn Trust & Savings Bank of Chicago, Illinois, you may state whether or not the bonds involved in this action and of which you are alleged to be the owner in the amended complaint are the bonds for which said exchange was made.

INTERROGATORY No. 9.

If you have stated that you made such exchange through the Fort Dearborn Trust & Savings Bank, state whether or not you have in your possession any document, or the copy of any document, involved in the making of such exchange, and if you have

such document or writing, will you please produce the same and have the same attached hereto as a part of your answer to this interrogatory.

INTERROGATORY No. 10.

State whether or not you had any business dealings with J. J. Corkill or with J. J. Corkill & Co. in any way involving your purchase or procurement of the bonds now owned and claimed by you, and if you had any dealings, please state in detail what those dealings were; to what extent, if any, said Corkill or Corkill & Co. represented you in the transaction, and you may also state what if any information you had as to said Corkill or Corkill & Co., representing the defendant Emmett Irrigation District in the matter, either of the sale or exchange of the bonds of the said Emmett Irrigation District.

INTERROGATORY No. 11.

Please state when you first saw the bonds which you purchased.

Defendants require that each and all of the aforesaid interrogatories be answered by each of the said plaintiffs, to-wit: J. Paul Thompson, A. E. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte M. Shipman, F. W. Horton, Mary C. Waddell, and J. Willis Gardner.

Respectfully submitted,
J. M. THOMPSON,
Residing at Caldwell, Idaho.
FREMONT WOOD,
and DEAN DRISCOLL,
Residing at Boise, Idaho,
Attorneys for Defendants.

Service of the within and foregoing interrogatories, by receipt of nine copies thereof this 17th day of August, 1916, is hereby acknowledged, and the making of an order by the Court or Judge permitting the filing of said interrogatories and for an examination of the plaintiffs named in said interrogatories, is hereby waived, plaintiffs however reserving the right to file objections to said interrogatories or any of them pursuant to Rule 58 of the Rules of Practice for Courts of Equity.

RICHARDS & HAGA,
Residing at Boise, Idaho,
Attorneys for Plaintiffs.

Endorsed: Filed Aug. 17, 1916.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)
No. 479.
DECISION.
May 31, 1917.

Richards & Haga, and McKeen Morrow, Attorneys for Plaintiffs.
Wood & Driscoll, Attorneys for Defendants.

DIETRICH, DISTRICT JUDGE:

This is a suit brought by bondholders against an irrigation district organized under the general laws of Idaho, and its directors, for the purpose principally of having a judicial determination of the validity of its outstanding bonds. It was commenced by J. Paul Thompson, who claims to be the holder of

bonds of the par value of $101,000.00, upon his own behalf and upon behalf of all other holders of bonds who might come in and share in the expense of the litigation. Several other bondholders intervened before trial and made proof touching their holdings. No evidence was offered relative to Thompson's bonds, and at the close of the hearing his counsel moved for a dismissal as to him, but without prejudice.

The bonds directly in suit are a part of an authorized issue of $1,100,000.00 par value, of which $897,600.00 are outstanding. The district has defaulted in the payment of the accrued interest, and through its officers has given out that it will presently honor none of the bonds because at least a considerable number of them are invalid.

It seems that upon proceedings duly taken as provided by law, the organization of the defendant district was confirmed, and the steps taken to authorize the issuance of the bonds in question were approved, by decree of court entered January 23, 1911. At that time there existed within the boundaries of the district an irrigation system, which had been constructed or partially constructed by the Canyon Canal Company under the provisions of the Carey Act, and water rights therein had been sold or contracted to many of the land owners. This system had been transferred to the Emmett Bench Canal Company, the holding company under the Carey Act, and thereafter, to-wit, on August 15, 1911, this company for a nominal consideration conveyed the system to

the district. At the time of the conveyance the property was subject not only to the burden of the outstanding water contracts with the farmers, which were liens upon their lands for deferred payments, but of certain trust deeds, and possibly other claims. While in neither deed referred to did the grantee assume the personal obligation of discharging these liens and claims, the conveyances were accepted subject to all legal charges, liens, and claims upon and against the property, and the canal company reserved the right to collect the deferred payments upon all of the outstanding water contracts. Such being the conditions, upon September 12, 1911, the district entered into a contract with J. J. Corkill & Company, of Chicago, Illinois, which, after reciting that the district was desirous of purchasing the irrigating system (to which, as we have seen, it already had title), and that Corkill was able to sell and deliver it, and further reciting that there were outstanding bonds and notes of the Canyon Canal Company aggregating $570,000.00, besides interest, secured by mortgages and water contracts, and that it was the desire of the district to pay all these obligations and to lift all incumbrances upon and claims against the irrigation system, and to procure funds for the extension and improvement thereof, and reciting further that Corkill & Company were able to give valuable assistance in making an exchange of the district bonds for such outstanding obligations, and were willing to purchase the bonds not required for that purpose, it was agreed that Corkill & Com-

pany would use their best efforts to consummate the desired exchange, and would cause to be transferred to the district the entire irrigation system, and would further cause to be assigned to it an unsecured claim of the Trowbridge & Niver Company against the Canyon Canal Company, the precise nature of which is not explained. The Fort Dearborn Trust & Savings Bank of Chicago was agreed upon as a depository, and with it the district was to deposit the entire issue of its bonds, for delivery from time to time as they were exchanged or sold by Corkill & Company. When the obligations of the Canal Company were finally discharged by exchange or payment, the water contracts which the Canal Company had deposited as collateral with the trustee of its bonds and notes were to be turned over to the district. These aggregated $525,469.62 principal, and $76,-868.16 interest, and there was also in the hands of the trustee cash to the amount of $28,197.94, making a total of principal, interest, and cash of $630,-535.72,—all of which was to go to the district as soon as the canal company's obligations were discharged in the manner hereinafter recited. The $1,100,000.00 bonds were to bear date January 1, 1911, and the coupons maturing July 1, 1911, were to be detached before delivery to the depository. The depository was to hold the bonds and deliver them in the following manner, namely: $470,000.00 to Corkill & Company, or upon their order, in even exchange for $470,000.00 of the bonds and notes of the Canyon Canal Company, and Corkill & Company

were to pay to the holders of such outstanding bonds and notes any excess of accrued interest thereon, for which they were to be reimbursed out of the $28,-197.94 cash in the trustee's hands, and $130,000.00 on account of the other $100,000.00 of bonds and notes and the accrued interest thereon, aggregating, principal and interest, $130,000.00. Two hundred and eighty thousand dollars of bonds were to be delivered upon payment to the credit of the district of cash equal to the par value thereof and accrued interest. The consideration for the other $220,000.00 bonds is not so clear. It was provided that they were to become the property of Corkill & Company when the latter caused to be delivered to the depository proper instruments transferring to the district the irrigation system and the unsecured claims of Trowbridge & Niver Company, but they were to be held by the depository as security for the performance by Corkill & Company of their obligations under the contract, among which was the obligation to purchase the $280,000.00 bonds in cash at par. These $280,000.00 bonds they were to take in installments, $50,000.00 in thirty days, $50,000.00 in sixty days, $50,000.00 in ninety days, and $130,000.00 on or before August 1, 1912. Provision was made for the delivery by the depository to Corkill & Company of the $220,000.00 bonds, the details of which need not be stated, for in general the depository was at all times to retain of such bonds an amount equal to twenty-five per cent of the then outstanding unexchanged obligations of the Canal Company, plus

the amount of $280,000.00 bonds which Corkill & Company had not taken and paid for in cash.

The district further agreed to get from all land owners a written waiver of all errors and irregularities of procedure, together with consent that their lands be taxed to pay the interest and principal of the bonds.

Corkill & Company failed to purchase the whole of the $280,000.00 bonds within the time agreed upon, and on September 12, 1912, a supplemental agreement was executed, which after reciting such default, provided for an extension of time to complete such purchase. It was also agreed that $5,000.00 of the $220,000.00 bonds, and $20,000.00 of the $280,000.00 bonds, should, by the depository, be returned to the district.

There was still another contract between the parties with a view to effecting the disposition of the bonds for cash, but it is unimportant at the present juncture, for generally it may be said that such bonds as are outstanding were disposed of under the contractual arrangement and for the considerations already explained. Of the bonds now out approximately $599,000.00 were exchanged in retiring the obligations of the Canyon Canal Company, as was contemplated by the agreement. Of the balance, $125,000.00 were sold for cash, $175,000.00 were delivered to Corkill & Company on account of the $220,000.00, and $25,000.00 were, by agreement of the parties, returned to the district. The depository still has in its possession approximately $177,-

000.00. The contract was complied with in every respect except that Corkill & Company did not purchase for cash more than half of the stipulated amount of bonds, but admittedly this default does not affect the validity of the bonds which are actually outstanding, all of which were issued in compliance with the contract. It is further to be borne in mind that the issuance by the district of the bonds to the amount of $1,100,000.00 was duly authorized, and the district was not induced by any fraudulent practices on the part of Corkill & Company to enter into the contract. The defenses are therefore limited to claims that the bonds are irregular in their form and in the manner of their execution, and that many of them, as appears from the contract and the explanatory testimony, were disposed of for an illegal consideration.

I am not inclined to regard seriously the irregularities relied upon in the form of the bonds and in the manner of their issuance. With a possible exception, depending upon the construction to be placed upon ambiguous or inconsistent recitals, the time fixed for their maturity is thought to be in harmony with the intent of the law. The Idaho statute is different from that of California, which is relied upon by the defendants to sustain their contention. The Idaho statutes contemplate that all of the bonds of a single issue shall be dated as of the first of January or the first of July, and their maturities are to be computed from the date of such "issue," regardless of the precise time any particular bond may be actually sold and delivered (Idaho Revised Codes, Sec. 2397).

The word issue, with its derivatives, does not always have the same meaning, and the intent with which it is employed must often be determined in the light of other parts of the provision where it is found, and taking the Idaho statute as a whole, I think the foregoing construction the more reasonable. A discussion of the corresponding, but dissimilar, California statute may be found in *Wright* v. *East Side Irrigation District*, 138 Fed. 313. See also *Yesler* v. *City of Seattle*, 25 Pac. 1014.

That the bonds were not executed by persons who were in office at the time they were deposited with the depository and by it delivered to Corkill & Company, or upon their order, is immaterial. They were executed by persons in office at the time their signatures were attached, and such acts constituted execution by the district. It remained only to deliver the bonds after sale, and the delivery likewise was made by persons in office at the time of the delivery, and such execution and delivery were therefore the acts of the district. I am wholly unable to appreciate the reasoning by which it is concluded that both the signature and delivery must be made by the same individuals. A corporation acts through its officers, and it is as much bound by a continuity of action of several successive persons in office as by like action initiated and consummated by a single person in office. *O'Neill* vs. *Yellowstone Irrigation District*, 121 Pac. 283. I note that in defendant's brief it is stated that some of the bonds were signed by Bell after he had ceased to be president of the district. Such is

not my recollection of the testimony, but even were this view to be adopted the bonds so signed are not identified; furthermore they were treated and disposed of as the duly executed bonds of the district by the authorized officers thereof, and were put upon the market for sale, and were sold. Under such circumstances the defendants cannot be heard to question the regularity of their execution. As to the ambiguous or inconsistent recitals touching maturity, I think that in view of the fact that the bonds have been sold the doubtful language should be resolved in favor of their validity—especially inasmuch as the alleged irregularity cannot substantially prejudice the rights of the district. The further objection that the bonds were not properly registered by the officers of the district is thought to be without merit. The statutory requirements relied upon are directory, and are not conditions precedent to the right of the district officers to issue the bonds; the failure of such officers to do their duty is without prejudice to the purchasers.

Passing now to the question of the legality of the consideration. It is of course not a question of the sufficiency of the consideration. If the directors acted within the scope of their authority we cannot relieve the district from the consequences of a bargain which may have turned out to be bad. The question is whether the contract was in excess or the district's powers, whether it was *ultra vires*. Under this head no point is made touching the bonds sold for cash (Idaho Revised Codes, Sec. 2404). It is further

conceded that had the $600,000.00 of bonds which were applied to the discharge of the mortgage and other liens against the property been used to acquire title to the irrigation works, such disposition would have been within the law (Idaho Revised Codes, Sec. 2386). Why the parties drew the contract in such form as to make it appear to cover the purchase and transfer of the physical properties is not made to appear, but of course Corkill & Company cannot be said thus to have deceived or misled the district. That feature raises no question of fraud. Everyone doubtless knew the facts. The district not only held the title to, but was in the actual possession and control of, the system, when the contract was made. We may conjecture that having some doubt as to whether under the statute the bonds could be disposed of in exchange for outstanding obligations in the nature of liens against the property, the parties, for the purpose of making a record entirely regular upon its face, resorted to this reprehensible expedient of falsely reciting that the district desired to purchase the canal system. But ignoring this untrue recital, and taking the facts as they actually existed, was the consideration for which the bonds were disposed of illegal or in excess of the authority of the directors to accept? Section 2386 of the Revised Codes of Idaho, after in general terms authorizing the board of directors to provide an adequate irrigation system, either by construction or by purchase, adds that "in case of purchase the bonds of the district * * may be used to their par value in pay-

ment." While it is true that, as we have seen, the district had acquired the legal title to the system, in no real sense was it the owner thereof. The nominal consideration of $10.00 recited in the deed may very well have been a fair measure of the real value of the interest conveyed. With water contracts out absorbing a large part, if not the whole, of its capacity, the system was as likely to be a liability as an asset to the holder. It must not be forgotten that these contracts were held by the Canyon Canal Company with the reservation to it of the right to collect all deferred payments thereon. If, therefore, the district was in reality to become the owner of this irrigation system in the sense, and the only sense, in which the statutes plainly contemplate such a system shall be owned by a district, it was indispensable that the beneficial as well as the nominal ownership be acquired. Contracts which would absorb the whole utility of the enterprise, and liens which, if not discharged, would ultimately result in divesting the district of even its naked legal title, must be taken over or wiped out before the district could be said to be the real owner. Suppose that instead of two transactions the acquisition of the legal title and the assignment of the water contracts and the liquidation of the liens had all been accomplished at one time, could there be any doubt that such a consummation would have simply amounted to a "purchase" of the irrigation system, and nothing more? But the circumstances that the result was reached by two steps instead of one does not change the essen-

tial nature of the transaction. I entertain no doubt that under the statutory provision quoted it was competent for the directors to use the bonds at their par value for the purpose of relieving the system from charges that rendered it well nigh valueless to the district.

It is further said that some of the notes and bonds for which the bonds were exchanged did not constitute valid liens. No very clear statement of just what facts are supposed to support this contention appears in the record. But however that may be, there is no proof of fraud or deceit upon the part of anyone concerned, and no charge of collusion between the directors of the district and Corkill & Company, and I am therefore of the opinion that questions touching the validity of the bonds and notes of the canal company, or of the water contracts, or of the agreements by which the mortgage and other liens were created, cannot now be raised. Assuming, as we must that the directors acted in good faith, their conclusion is now binding upon the district. They may have made a mistake, they may have been ill-advised, but we cannot now inquire into or revise their judgment. It would be quite as reasonable to question the validity of bonds admittedly given as the purchase price of an irrigation system, upon the ground that the price agreed upon by the directors in good faith was in fact excessive. Undoubtedly there were outstanding bonds, notes, and contracts which were claimed to be charges upon the property. The district officers could at their option

have questioned them at the time the contract was entered into and declined to include any particular bonds or claims, but manifestly they either recognized their validity, or deemed their invalidity so doubtful that they were unwilling to assume the burden of a contest. The district has now had all of these liens and charges cleaned up and has gotten the consideration for which the bonds were issued, and it cannot be heard to say that some of the claims might have been defeated if a contest had been instituted. In good conscience it would have to restore the consideration and put the parties in *statu quo*, and that it does not offer to do, and probably could not do. The transaction in this respect being within the scope of the directors' authority, their action is at this late date conclusive, in the absence of fraud, and no fraud is charged.

We come now to consider the status of the outstanding bonds of the $220,000.00 group, approximately $175,000.00. Admittedly the power of the irrigation district to dispose of its bonds is limited to either a sale for cash or an exchange at face value for irrigation works. Under the contract no money was to be paid for these bonds. The district held the legal title to the physical property constituting the irrigation system, and the bonds we have already discussed were to fully satisfy all liens against or upon it. For what consideration, then, were Corkill & Company to receive $220,000.00? The defendants say, commission or compensation for their services. The contract is vague and throws no clear

light upon the question. It recites that the district had authorized the sale of $1,100,000.00 bonds, and that it desired to use them "for the purpose of purchasing the properties of the said canal company, retiring all of the (said) outstanding bonds and notes of the canal company, paying all valid and outstanding liens, charges, and claims against the property, so that said property may be held by the district free and clear of all liens whatsoever, and to furnish funds" for the extension and completion of the system; and it is further recited that Corkill & Company are "able and willing to assist the district in exchanging the bonds of the district for said outstanding notes and bonds of the canal company, and also are willing to purchase the remainder of said bonds over and above those that are necessary to be used in effecting such exchange." There is no express provision for a discount or a commission or other compensation to Corkill & Company, and the mode provided for the delivery to them of the $220,000.00 bonds is doubtless suggestive of a commission upon the bonds exchanged and a discount on the bonds purchased—a straight twenty per cent upon the entire issue. We find a vague reference to some sort of claim against the canal company held by Trowbridge & Niver Company, for the payment of which no express provision is made, and which possibly in the minds of the parties might have constituted a consideration in whole or in part for these bonds. Without any explanatory recital either preceding or attending it, there is a clause following

the agreement of Corkill & Company to transfer to the district the entire irrigation system of the canal company, to the effect that they would also assign or cause to be assigned "the unsecured claim or claims against the canal company held by Trowbridge & Niver." There is no further explanation of such claim or claims, no light upon the amount, origin or nature thereof, but it does appear that whatever the claim or claims may have been, they were "unsecured," and hence constituted no lien upon or charge against the canal system, and were therefore beyond the power of the district or its officers to pay.

But while doubtless the defendants' theory of a twenty per cent commission—which would be unlawful is not without strong support, another view quite as reasonable I think can be taken, by which the contract may be sustained rather than overthrown. Unfortunately there is no recital of what, at that time, the parties estimated the canal properties to be worth, and the record is without direct light. There is in evidence a financial statement of the district as of date February 1, 1913, formerly certified as being correct by the president and the secretary of the district, which perhaps may be accepted as fairly disclosing the views which were then entertained. From this it would appear that the physical properties—the dam, canals, headgates, etc.—were estimated to be worth in the aggregate $952,000.00, and the horses, tools, and other equipment, $30,000.00. In addition to this, a value of $876,-

000.00 is placed upon a decreed water right of approximately 440 second feet. Even though we may be inclined to regard this last item as in a very large measure visionary and fictitious, still such right may in itself have been of some substantial value. However that may be, the estimate does tend to disclose the probable views and estimates of the officers of the district at that time, and inferentially at the time the contract was executed. Now it is fair to assume I think that when it was organized the district had no assets, and that its only funds came from the sale of its bonds and direct assessments against the lands. What amount of money it had realized from assessments for the year 1912 does not appear, but the statement referred to shows that $60,000.00 on account thereof had not been collected, and hence it was probable that little from this source had gone into permanent additions to the irrigation system. If we assume that the whole of the $125,000.00 realized from the cash sales of bonds had been devoted to betterments, and that the system had received a corresponding increment of value since its purchase, and if we put aside all consideration of the value of the mere water right, it may be reasoned that the property in the condition in which it was in September, 1911, was considered to be worth approximately $850,000.00. Now if the contract had been fully carried out and all the bonds disposed of, the district would thus have had the physical property free from liens and incumbrances, and $180,000.00 in money, realized from the cash sales of bonds which Corkill

& Company failed to take, and its outstanding obligations would be $1,100,000.00. The consideration which it would thus have received for its bonds would be a little less than the face value of the bonds. Or, if we put it in another way and take the transaction as it actually stands, the district acquired property which is worth $857,000.00, besides the water right, and on account thereof has issued and has outstanding bonds to the amount of approximately $900,000.00. Now reverting to the contract, we have seen that at the time of the execution thereof, while the canal company had parted with the legal title to the system, it had, prior to such conveyance, contracted to farmers water rights which absorbed a large part of the beneficial interest therein, and it held these contracts, which aggregated, principal, interest, and cash on hand with the trustee, $630,535.72. While it is true that it did not have possession of the contracts or the cash, but they were held by the trustee as collateral, still manifestly upon completing the exchange of the $600,000.00 district bonds for the outstanding bonds and notes of the canal company, in the absence of some agreement to the contrary, the canal company would at once become entitled to the possession of both this cash and the contracts, and, under the reservation of its deed to the operating company, it had the right to continue to collect the deferred payments and to devote the whole thereof to its own use. Upon the other hand, the land holders, upon completing such payments, would be entitled to receive water from

the canal, and indeed would become the several owners of undivided interest in the system. Just what portion of the capacity of the canal these rights would, in the aggregate, represent is not made certain, but a very substantial part, it must be assumed, and such rights, it hardly need be said, would have to be respected by the district, which acquired only what the canal company had to sell to its or its immediate grantor. If, therefore, the district was to purchase the system in its entirety, and to acquire the absolute title thereto and the complete beneficial interest therein, free from liens or other burdens, it would be necessary to wipe out these contracts. Just how this was to be done does not appear, but it is expressed in the agreement (Section 3) that Corkill & Company were to cause all of these contracts to be assigned to the district as soon as the $600,000.00 bond exchange was consummated. If, therefore, we assume that the $220,000.00 bonds were in consideration for the assignment of these contracts, it follows, I think, that within the meaning I have placed upon the statute authorizing the use of bonds in the payment of the purchase price for irrigation works, these bonds were not issued for an unauthorized consideration. While the real intent of the parties is not certain, it is clear that the district was to get this large volume of contracts, of great value in any view, for which it was to pay no designated or express consideration. If it should be successful, as in all probability it would be, in procuring their cancellation by the landowners in the district, and

inducing the parties thereto to come in and take water upon the same basis with other land owners, it would in effect have acquired a large interest in the irrigation system. The contract leaves no doubt that such was the purpose. But even if unsuccessful in carrying out this purpose, it would still have the right to collect deferred payments aggregating nearly three times the amount of the $220,000.00 bonds, and therefore in assigning these contracts to the district there was in effect a transfer of a large aggregate interest in the irrigation works called for by the contract. It being quite as reasonable to assume that such was the consideration for the $220,000.00 bonds as that they were intended to cover a commission or rebate, it is our duty, under a familiar principle, to adopt the view that the parties intended a legal rather than an illegal transaction.

It may be added that even were it reasonably clear that the $220,000.00 bonds were intended as a commission, it would be extremely difficult, if not impossible, now to give relief. It is highly improbable that at this late date such bonds could be identified, or would be found in such a condition that the defense of illegal consideration would be available. It is altogether likely that practically all the land owners in the district knew of the contract and by their silence and inaction they have acquiesced therein. If the directors were exceeding their authority and attempting to do an illegal thing, prompt action should have been taken to restrain them. The district has gotten from the contract a benefit which it

cannot now restore, and rights of the innocent public have grown up, which would be imperilled by any attempt on the part of the court to reach and cancel these bonds. Even though we might not be inclined to recognize the doctrine of estoppel in the extreme reach to which it seems to have been carried by the Supreme Court of the State in *Page* v. *Oneida Irrigation District*, 26 Idaho, 108, 141 Pac. 238, we should at least not be astute to find a reason for overthrowing a contract with which apparently all parties affected thereby were content, until after it had in a large measure been performed.

Having reached this conclusion, it is unnecessary to discuss the question whether the intervening plaintiffs who submitted proof touching the manner of their acquisition of the bonds which they hold and the consideration they paid for them are innocent purchasers for value. Nor is it thought to be necessary to consider what action it would be appropriate to take had it been found that a part of the bonds were illegally issued.

A decree will be entered establishing the validity of the intervenors' bonds and directing the payment to them on account of the overdue interest thereon of their ratable proportion of the fund applicable to that purpose now in the hands of the treasurer of the district. For reasons dicussed at some length during the course of the trial, I think it will be proper to deny the plaintiffs their costs, leaving it to each party to pay his own costs.

Filed May 30, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 479.

DECREE.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows, viz:

That the coupon bonds of the defendant Emmett Irrigation District, bearing date the first day of January, A. D., 1911, being a part of Series No. 1 of the First Issue of Bonds of said District and now outstanding, with the unpaid coupons thereto belonging, being bonds numbered M1 to M4, inclusive, M8 to M127, inclusive, M129 to M130, inclusive, M132 to M219, inclusive, M221 to M262, inclusive, each of the denomination of $1,000.00, and D1 to D16, inclusive, D23, D44 to D55, inclusive, D62 to D66, inclusive, D83 to D84, inclusive, D86 to D87, inclusive, D90 to D92, inclusive, D111 to D118, inclusive, D120 to D125, inclusive, D131 to D136, inclusive, D139 to D168, inclusive, D172 to D180, inclusive, D196 to D201, inclusive, D204 to D217, inclusive, D220 to D221, inclusive, D227 to D280, inclusive, D283 to D343, inclusive, D345 to D354, inclusive, D361 to D592, inclusive, D594, D595, D597 to D567, inclusive, D659 to D743, inclusive, D746 to D814, inclusive, D827 to D870, inclusive, D987 to D1072, inclusive, D1161 to D1328, inclusive, D1331 to D1332, inclusive, D1383 to D1646, inclusive, each of the denomination of $500.00, and bonds numbered C1 to C75, inclusive, C77 to C79, inclusive, C81 to

C115, inclusive, C119 to C131, inclusive, each of the denomination of $100.00, are legal and valid obligations of said Emmett Irrigation District.

That the defendants, and each of them, and the successors in office of the defendants W. H. Shane, N. B. Barnes, E. J. Reynolds and R. B. Shaw, respectively, are hereby perpetually restrained and enjoined from diverting or otherwise appropriating, applying or using for any purpose, other than for the payment of principal and interest as the same, respectively, become due according to the tenor of said bonds, until all of said bonds and the interest coupons thereto belonging have been paid or otherwise discharged, the money collected for or hereafter paid into the Bond Fund created, or required by law to be created, for the payment of the principal of and interest on said bonds; and they, and each of them, are hereby ORDERED and DIRECTED, so far as the matter comes within their official duties, to apply the money now in said Bond Fund, or that may hereafter be paid into said Fund under the tax levied on the 22nd day of October, 1913, first, to the payment of the interest coupons maturing January 1st, 1914, and originally attached or belonging to said bonds so outstanding, as aforesaid, upon the presentation of said coupons, or in the event there is not sufficient money in said Fund to pay all of said coupons in full, then to the pro rata payment thereof; second, after the payment of the January 1st, 1914, coupons in full, then to the payment of the coupons maturing July 1st, 1914, upon the presentation of said cou-

pons, and in the event there is not sufficient money in said Fund to pay all of said last mentioned coupons in full, then to pro rate payment thereof; and, third, the overplus, if any there be, of said tax to the payment of other past due interest coupons originally attached to said bonds and now outstanding and unpaid, in the order of their respective maturities, and if the money in said Fund is not sufficient to pay all the coupons of the same maturity in full, then to the pro rate payment thereof; and in the event any coupon is not paid in full, the amount paid thereon, with the date of such payment, shall be endorsed thereon and theTreasurer of the District may also demand, as evidence to be retained by him of such payment, a receipt from the person presenting such coupon showing such partial payment.

Done in open Court this 16 day of July, 1917.

FRANK S. DIETRICH,
District Judge.

Endorsed: Filed July 16, 1917.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)
In Equity, No. 479.

DEFENDANT'S STATEMENT OF EVIDENCE UNDER EQUITY RULE NO. 75

BE IT REMEMBERED that this cause came regularly on for trial before the court, sitting in equity, at the court room of the above entitled court, at Boise City, Ada County, Idaho, on Monday, the 16th day April, 1917, at the hour of 10

o'clock A. M. on the amended bill of the above named plaintiffs and the amended answer of the above named defendants and the issues made thereon, Richards & Haga of Boise, Idaho, appearing as attorneys and solicitors for each and all said plaintiffs, and J. M. Thompson of Caldwell, Idaho, and Fremont Wood and Dean Driscoll of Boise, Idaho, as attorneys and solicitors for the said defendants and each of them.

Whereupon, the following testimony was introduced and proceedings had:

It was first stipulated and agreed by and between counsel, and thereupon ordered by the court, that it should be understood that each and every party should be deemed to have exceptions taken to all adverse rulings without further mention.

Whereupon, the plaintiffs, by their said attorneys, offered the following evidence in support of the issues on their part:

HARRY S. WORTHMAN, called as a witness on behalf of plaintiffs, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION BY MR. HAGA.

I am Harry S. Worthman and reside at Emmett, Idaho; am a farmer and have been an attorney at law by profession for a number of years. I was secretary of the Emmett Irrigation District from the time of organization in 1910 throughout the year 1911 and W. E. Bell was president during that time. As such I kept the minutes of the Board of Directors proceedings.

The Minutes of Directors' Meeting of January 24, 1911, refer to the bonds in question herein.

Whereupon, the said minutes were read in evidence. From which it appeared that on the 24th day of January, 1911, the board of directors of said district adopted a resolution, providing that the board sell the whole amount of bonds authorized, to-wit, series No. 1, Issue No. 1, or so much thereof as the board might deem feasible, bonds to draw interest at six per cent per annum, payable semi-annually, bids to be received until February 25th, 1911, and directed the secretary to publish notice of the sale of said bonds in accordance with law.

It was further proved by said witness that said secretary gave notice of the sale of said bonds in accordance with law.

And thereupon witness read and there was admitted in evidence the minutes of the board of directors' meeting of February 25th, 1911, whereby it appeared that no bids for bonds had been received.

The witness then read in evidence the minutes of the board of directors' meeting of October 8th, 1911, relating to the bonds here in question, whereby it appeared that the secretary of said meeting presented to the board a form of bond prepared by Adams & Candee, which was adopted by the board.

Witness was then handed instrument purporting to be Bond No. D298 of defendant district, dated January 1st, 1911, and testified that his signa-

ture appeared thereon as secretary, and Mr. Bell's as president; and that he did not know whether it was the form of bond referred to in the minutes last read. The form of bond before the board at the time of the approval of the bond was a typewritten copy. This bond, D298, is lithographed. The adopted copy was returned for the purpose of having it lithographed or engraved. The lithographed bonds were returned to the district in December following. I read them very carefully three or four times before they were signed. I remember that, and I presume they were all alike and I signed the bonds. At the time the bonds were received and opened at the Bank of Emmett I compared the printed form with some forms that I had at the time. I don't know whether it was the original typewritten copy or not but I remember that I read it over carefully and Mr. Craig aided me in comparing it but I did not compare the lithographed bonds one with the other. The lithographed bonds were signed up the latter part of December, I don't know whether it ran into January or not. I do not know whether all the bonds with the exception of numbers, date of maturity and amount of bond read alike. I would have to read every bond before I answered that question. I have not any doubt about it. I found none that did not read the same as the rest and have no reason to believe that they did not read alike, with the exception of the matters referred to.

Whereupon bond numbered D298 was offered and

received in evidence, the following being a true and correct copy thereof:

UNITED STATES OF AMERICA
STATE OF IDAHO
COUNTY OF CANYON.

$500		$500
Number	EMMETT	First
D298	IRRIGATION DISTRICT	Issue

Six Per Cent Municipal Irrigation District Bond
Series No. 1 Thirteen Year Bond

KNOW ALL MEN BY THESE PRESENTS: That the EMMETT IRRIGATION DISTRICT, a municipal corporation located in the County of Canyon, State of Idaho, for value received, acknowledges itself to owe and hereby promises to pay to the bearer hereof the sum of

FIVE HUNDRED DOLLARS ($500)

on the first day of January, A. D. 1924, together with interest thereon from the date hereof until paid at the rate of Six per cent. (6%) per annum, interest payable semi-annually on the first days of January and July in each year upon presentation of the annexed interest coupons as they severally become due. Both principal and interest are payable in lawful money of the United States of America at the office of the Treeasurer of the Emmett Irrigation District in the County of Canyon in the State of Idaho, or at the option of the holder hereof, at the Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois. This bond is one of a series of bonds aggregating One Million One Hun-

dred Thousand Dollars ($1,100,000) in amount and issued by the undersigned by authority of an act of the Legislature of the State of Idaho entitled: "An Act relating to irrigation districts and to provide for the organization thereof and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes, and for other and similar purposes," approved March 9th, 1903, together with acts amendatory thereto and supplemental thereto, the same being known as "Title 14 of the Political Code of the State of Idaho," entitled "Irrigation Districts." Said series consisting of two hundred and sixty-two (262) bonds of the par value of One Thousand Dollars ($1000) each numbered consecutively from M-1 to M-262, inclusive; Sixteen hundred and forty-six (1646) bonds of the par value of Five Hundred Dollars ($500) each numbered consecutively from D-1 to D-1646, inclusive, and one hundred and fifty (150) bonds of the par value of One Hundred Dollars ($100) each, numbered consecutively from C-1 to C-150, inclusive, which are due and payable as follows: Fifty-five Thousand Dollars ($55,000) in amount being bonds numbered from D-1 to D-110, inclusive, on January 1st, 1922; Sixty-six Thousand Dollars ($66,000) in amount, being bonds numbered from M-1 to M-7, inclusive, and from D-111 to D-228, inclusive, on January 1st, 1923; Seventy-seven Thousand Dollars ($77,000) in amount, being bonds numbered from M-8 to M-17, inclusive, and from

D-229 to D-362, inclusive, on January 1st, 1924; Eighty-eight Thousand Dollars ($88,000) in amount, being bonds numbered from M-18 to M-32, inclusive, and from D-363 to D-508, inclusive, on January 1st, 1925; Ninety-nine Thousand Dollars ($99,000) in amount, being bonds numbered from M-33 to M-42, inclusive, and from D-509 to D-656, inclusive, and from C-1 to C-150, inclusive, on January 1st, 1926; One Hundred and Ten Thousand Dollars ($110,000) in amount, being bonds numbered from M-43 to M-57, inclusive, and from D-657 to D-826, inclusive, on January 1st, 1927; One Hundred and Twenty-one Thousand Dollars ($121,000) in amount, being bonds numbered from M-58 to M-92, inclusive, and from D-827 to D-998, inclusive, on January 1st, 1928; One Hundred and Forty-three Thousand Dollars ($143,000) in amount, being bonds numbered from M-93 to M-137, inclusive, and from D-999 to D-1194, inclusive, on January 1st, 1929; One Hundred Sixty-five Thousand Dollars ($165,000) in amount, being bonds numbered from M-138 to M-192, inclusive, and from D-1195 to D-1414, inclusive, on January 1st, 1930; and One Hundred Seventy-Six Thousand Dollars ($176,000) in amount, being bonds numbered from M-193 to M-262, inclusive, and from D-1415 to D-1646, inclusive, on January 1st, 1931. And it is hereby certified that all things required by law to be done in and about the organization of said district and the issuance of the said bonds have been done, have happened and have been

performed, and that the issuance of this bond has been duly and legally authorized by vote of the electors of said District at a special election duly called and held in accordance with the provisions of the said act and by resolution of its Board of Directors, and that all other acts, conditions and things required by the laws and constitution of the State of Idaho precedent to and in the issue and delivery of this bond have been done, have happened and have been performed, and that said bonds are the valid, binding and legal obligation of the said District; that all the real property included within said District is subject to the levy of an annual tax for the payment thereof.

IN WITNESS WHEREOF, the said Emmett Irrigation District has by virtue of the authority aforesaid caused this bond to be executed in its name by its President and Secretary, and the Seal of its Board of Directors to be affixed hereto this first day of January, A. D., 1911.

EMMETT IRRIGATION DISTRICT,
By W. E. BELL, President.

Attest: HARRY S. WORTHMAN, Secretary
(Seal Emmett Irrigation District, Emmett, Idaho.)

(Form of Coupon attached.)

On the first day of Jan., A. D. 1924, Emmett Irrigation District will pay to bearer at the office of the County Treasurer of Canyon County, Idaho, or at the option of the holder hereof, at Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois, the sum of Fifteen Dollars in lawful

money of the United States, being six months interest due that day on its municipal irrigation District Bond of January first, A. D., 1911. Series No. 1. Issue No. 1 No. D298.

HARRY S. WORTHMAN,

Secretary. $15.00

CROSS EXAMINATION BY DRISCOLL.

Mr. Haylor succeeded me as secretary of the defendant District. The minutes of the Board of Directors of January 2nd, 1912, in Book 2 at page 1-a refer to the election of a secretary for the District. Said minutes were thereupon offered, read and received in evidence, and are as follows, to-wit:

"Regular meeting of the Board of Directors of the Emmett Irrigation District, held at the office of the District at Emmett, Idaho, on the second day of January, 1912, at ten o'clock A. M. of said day. Present, R. B. Wilson, W. H. Shane and C. L. Spaulding. It was moved and seconded that H. Haylor be appointed secretary. Carried."

The witness further testified that the minutes were signed by R. B. Wilson as president and H. Haylor as secretary. I actually ceased to act as secretary January 2, 1912. I was present at the meeting of that day. Mr. Haylor began to act at that time. I wrote the minutes down to the point where he was appointed secretary and I turned the pencil over to him and he signed the minutes.

It was then stipulated between counsel for plaintiffs and defendants that W. H. Shane succeeded W. E. Bell as a director of defendant District, that he

was elected and the votes of the election canvassed at the Directors' meeting of December 20th, 1911. The following portion of the minutes of the meeting of the board of directors of the defendant District on December 22nd, 1911, were then read and received in evidence:

"Special meeting of the board of directors of the Emmett Irrigation District held at the office of the district at Emmett, Idaho, on the 22nd day of December, 1911, at 3 o'clock P. M. of said day. Present, R. B. Wilson, W. H. Shane and C. L. Spaulding."

The minutes continued: After the bonds were signed they were left in the hands of the Bank of Emmett, Mr. Craig, cashier. I never compared bond No. D-298 with any other bond.

RE-DIRECT EXAMINATION BY MR. HAGA.

The witness read and there was received in evidence the following portion of the minutes of the board of directors of the defendant District of January 2, 1912:

"It was ordered that the secretary send the bond of W. H. Shane to the probate judge for approval, with the request to hand to the register for record, returning same to this office."

And the following: "Minutes of all previous regular and special meetings were read and aproved, with the exception that in the minutes of September 26, 1911, where they refer to a certain stipulation relative to the liberty of the Fort Dearborn Trust and Savings Bank, a copy of said stipu-

lation was omitted from said minutes, and a copy of said stipulation is therefore inserted in these minutes."

Witness excused.

The deposition of Ernest C. Glenny of Chicago, Illinois, taken on the 21st day of December, 1915, at Chicago, Illinois, pursuant to stipulation of the respective parties plaintiff and defendant, in behalf of plaintiff, was then read by counsel for plaintiff.

Said witness, being first duly sworn, testified in said deposition as follows

I am Ernest C. Glenny, residing at Chicago, Illinois, and secretary and trust officer of the Fort Dearborn Trust and Savings Bank, and have seen in my official capacity an agreement between this defendant District as party of the first part and J. J. Corkill & Company, parties of the second part, dated September 12, 1911. Whereupon said agreement was offered and received in evidence, the same being a full, true, exact and correct copy of Exhibit "A" attached to and made a part of defendants' answer herein.

All the bonds mentioned in Section Four of said contract aggregating $1,100,000.00 were delivered to the Fort Dearborn Trust and Savings Bank under that section. $800,000 of these bonds were received immediately prior to January 5, 1912, and the remaining $300,000.00 on or about February 29th, 1912. I examined them. They purported to be signed by the officers of the District and sealed by the District seal. Under the provisions of Sec-

tion Five, paragraph (a), I delivered $469,000 amount of bonds from time to time to the parties of the second part or their order upon surrender of the above mentioned bonds dated June 15th, 1905, or notes dated December 15th, 1908, or notes dated May 1st, 1909, the par value of the bonds of the District so delivered equaling the par value of the above mentioned bonds and notes so surrendered.

Under Section 5-b I delivered $130,000 par value in amount to the parties of the second part, or their order, upon the surrender of $100,000 of second and collateral trust bonds. The par value of the District bonds so delivered equalling the par value of said notes so surrendered, together with accrued interest to July 1st, 1911.

Under the provisions of Section 5-c and that part of the contract beginning with the sentence on page 8, fifth line from the bottom, "said Depositary is and shall be in writing authorized," etc., and continuing through the third line of page nine of said contract, we delivered from time to time an amount of bonds equal to twenty-five per cent of the bonds and notes which had been exchanged, meaning by the latter, bonds and notes of the Canal Company referred to in the agreement.

Under paragraph 5-d and the first paragraph on page 9 of said contract, beginning at the middle of fifth line from the top thereof, we delivered to the parties of the second part $148,900 of bonds. The total amount of bonds delivered to parties of the second part or their order is $897,600. We have delivered

$25,000 par value of said bonds to the defendant District in addition and have in our possession now $177,400 par value, the number, denominations and amounts in our possession being as follows:

Nos. C-132 to 150, inclusive, at $100	$ 1,900.00
Nos. M-5 to 7, inclusive, at $1000	3,000.00
No. 17, at $1000	1,000.00
No. 128, at $1000	1,000.00
No. 131, at $1000	1,000.00
No. 220, at $1000	1,000.00
Nos. D-17 to 22, inclusive, at $500	3,000.00
Nos. 24 to 43, inclusive, at $500	10,000.00
Nos. 56 to 61, inclusive, at $500	3,000.00
Nos. 67 to 82, inclusive, at $500	8,000.00
No. 85, at $500	500.00
Nos. 88 and 89, at $500	1,000.00
Nos. 93 to 110, inclusive, at $500	9,000.00
No. 119, at $500	500.00
Nos. 126 to 130, inclusive, at $500	2,500.00
Nos. 136 to 138, inclusive, at $500	1,500.00
Nos. 169 to 171, inclusive, at $500	1,500.00
Nos. 181 to 195, inclusive, at $500	7,500.00
Nos. 202 and 203, inclusive, at $500	1,000.00
Nos. 218 and 219, inclusive, at $500	1,000.00
Nos. 222 to 226, inclusive, at $500	2,500.00
Nos. 281 and 282, inclusive, at $500	1,000.00
No. 344, at $500	500.00
Nos. 355 to 360, inclusive, at $500	3,000.00
No. 593, at $500	500.00
No. 596, at $500	500.00
Nos. 744 and 745, at $500	1,000.00

Nos. 815 to 826, inclusive, at $500	6,000.00
Nos. 871 to 896, inclusive, at $500	58,000.00
No. 1067, at $500	500.00
Nos. 1073 to 1160, inclusive, at $500	44,000.00
Nos. 1329 and 1330, at $500	1,000.00
Total	$177,400.00

Under Section 5-d parties of the second part have paid to us the following amounts at the following times:

March 4th, 1912, $18,000.00; March 7th, 1912, $30,000.00; March 8th, 1912, $1,995.00; April 19th, 1912, $60,000.00; April 24th, 1912, $5,000.00; April 30th, 1912, $4,000.00; May 8th, 1912, $2,000.00; May 13tth, 1912, $3,000.00; May 21st, 1912, $5,-000.00; July 12th, 1912, $5,000.00; September 25th, 1912, $30,420.00; September 2nd, 1913, $20,-200.00 ($5,000.00 of which, however, was immediately withdrawn by Corkill & Company in the understanding that coupons from these bonds dated January 1st, 1913, to this amount of $5,000.00 in the hands of the depositary uncancelled be cancelled as a credit to the District)."

We paid the January 1st, 1912, July 1st, 1912, and January 1st, 1913, coupons cut from these bonds. The january 1st, 1912, coupons maturing prior to the delivery of the bonds to us were paid because their payment was taken into consideration in the arrangement for the exchange of old securities, it being provided in the exchange arrangements that the persons receiving these bonds were to receive the January 1st, 1912, coupons attached.

We received the following amounts of money at the following times from the Trustee under the mortgages issued by the Canyon Canal Company mentioned in paragraph three, on page five of the contract, to-wit:

March 29, 1912,....	$17,539.21
April 5, 1912.....	5,387.50
April 16, 1912.....	1,598.75
A total of.....	$24,525.46

The original agreement now handed me, marked Plaintiff's Exhibit "C" to the deposition, dated September 12, 1912, between the Emmett Irrigation District as party of the first part and J. J. Corkill & Company, parties of the second part, is the agreement under which a portion of the bonds were delivered by us, whereupon said agreement, which was duly executed, was offered in evidence and admitted, the same reading as follows, to-wit:

"WHEREAS, the parties hereto have made and entered into a contract for the sale and exchange by the District to the parties of the second part of ONE MILLION ONE HUNDRED THOUSAND ($1,100,000.00) DOLLARS in amount of the bonds of said District, which contract was dated September 12, A. D. 1911, the terms, conditions and provisions of which were modified and changed by various subsequent collateral agreements between said parties; and

WHEREAS, there has arisen various disputes and differences of opinion between the parties here-

to concerning the terms and conditions for the purchase and exchange of said bonds as aforesaid, but as all of said controversies have been adjusted to the satisfaction of both parties hereto, the District desires to extend the time for the purchase of the unsold portion of said bonds and the parties of the second part agree to take up and pay for said unsold bonds, subject to the terms, conditions and provisions as contained in said contract of September 12, A. D. 1911 and said agreements supplementary thereto, except as said terms, conditions and provisions are modified and changed by the provisions of this instrument.

NOW THEREFORE, in consideration of the sum of ONE ($1.00) DOLLAR in hand paid to the party of the first part by the parties of the second part, and other good and valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements contained in said contract of September 12, 1911 and said contracts collateral thereto, and herein, the District agrees to extend the time for taking up and paying for said unsold bonds, and the parties of the second part agree to take up and pay for said unsold bonds, subject to the terms, conditions and provisions of said contracts, except as the same are modified, changed and abrogated herein; and

I. The parties of the second part agree to take up and pay for the unsold bonds of the District, being the unsold portion of the TWO HUNDRED AND EIGHTY THOUSAND ($280,000.00) DOL-

LARS in amount of bonds mentioned in paragraph (d) of Section 5 of said contract dated September 12 A. D. 1911, at the following times:

Thirty Thousand ($30,000.00) Dollars in amount upon the execution of this instrument, subject to the conditions and provisions hereinafter mentioned.

Ten Thousand ($10,000.00) Dollars in amount October 15, 1912.

Five Thousand ($5,000.00) Dollars in amount November 15, 1912.

Eight Thousand ($8,000.00) Dollars in amount December 15th, 1912;

and the balance of said unsold bonds mentioned in said paragraph (d) of said Section Five within thirty days after all interest due on the outstanding bonds of the District has been collected and remitted to the Depositary, also within thirty days after the order of confirmation of the apportionment of benefits proceedings instituted in the District Court of Canyon County by the District becomes final, the evidence of the finality of said judgment of confirmation to be evidenced by a certificate of the Clerk of the District Court of Canyon County, Idaho, which said certificate shall be filed with the said depositary, said payments shall be considered to apply only upon the principal of said bonds at par, the accrued interest thereon to be paid additional thereto at the time said principal sums are paid, and upon making such payments the parties of the second part shall be entitled to take up and receive from the depositary mentioned in said con-

tract of September 12, 1911, such respective amounts of bonds mentioned in said paragraph (d) of Section 5 and also the proportionate amount of bonds mentioned in paragraph (c) of Section 5 of said contract of September 12, 1911, upon the terms and conditions therein and elsewhere in said contract specified.

II. The payment of the Thirty Thousand ($30,000.00) Dollars to be made on the date of the execution of this instrument, shall be deposited with Fort Dearborn Trust and Savings Bank of Chicago to be forwarded to the Boise City National Bank of Boise, Idaho, to be paid out upon the order of the President and Secretary of said District, said funds being for the benefit of the District in the acquisition and purchase of flumes, for the flumes of the District already contracted for.

III. The parties of the second part further agree to provide funds sufficient to pay the outstanding coupons of the District, which mature January 1st A. D. 1913 and, upon making such deposit, on or before December 31st, A. D. 1912, the party of the second part shall be entitled to receive interest warrant or warrants properly executed by the District for the amount so deposited; such interest warrant or warrants shall contain proper endorsements showing that the same has been presented for payment and that no funds are available, in order that interest at seven (7%) per cent. may run on said warrants from and after January 1st, A. D. 1913, in conformity with the statutes of Idaho regulating the same.

IV. The District agrees that on or before December 15th A. D. 1912, the Board of Directors shall pass a resolution, reciting that it is impossible because of the shortness of time to collect the full amount of the interest due on its outstanding interest coupons which mature January 1st 1913, and authorizing a loan, with interest at seven (7%) per cent. from the parties of the second part for that purpose, giving its warrants therefor.

V. It is mutually agreed by the parties hereto that Twenty Thousand ($20,000.00) Dollars in amount of the bonds mentioned in said paragraph (d) of Section 5, and Five Thousand ($5,000.00) Dollars in amount of bonds mentioned in paragraph (c) of Section 5 of said contract dated September 12, A. D. 1911, shall be immediately returned to the District by the depositary mentioned in said contract, free from all claims or demands whatsoever of the parties of the second part, and this paragraph shall be construed as instructions to said depositary to make such return at once.

VI. WHEREAS, in accordance with the terms and provisions contained in said contract of September 12 A. D. 1911, the funds held by the Continental Commercial Trust and Savings Bank, Trustee, of Chicago, Illinois, were turned over to the District and used by it in its construction fund, and inasmuch as said funds amounting to $24,783.00, more or less, were paid to said Trustee by the settlers to provide for the payment of the principal and interest of the outstanding bonds and notes of

The Canyon Canal Company, Limited, and therefore said funds were by mistake placed in the construction fund of the District, instead of being placed in the bond and interest fund of said District, and, whereas, the parties of the second part took up and paid for part of the bonds of the District and, in accordance with the provisions of said contract of September 12, 1911, paid its accrued interest on said bonds which was also turned over to the District and by mistake was placed in the construction fund instead of being placed in the interest fund where it properly belonged, therefore, in order to correct said error and to place said moneys in their proper funds, the District agrees that the Board of Directors of the District shall pass a resolution reciting the above facts and authorizing and directing that the total amount of money received from the Continental Commercial Trust and Savings Bank, Trustee, all accrued interest which has been received on the bonds sold, and also such further accrued interest as may from time to time be paid, be transferred from said construction fund to said bond and interest fund, that upon deposit of the accrued interest with the Depositary the same shall be repaid to Corkill & Co. upon proper endorsements by said Depositary upon interest warrants of the District held by Corkill & Co.

VII. The parties of the second part agree to cause the immediate release and cancellation of as many of the water contracts of the Canyon Canal Company, Limited, as possible under existing cir-

cumstances and the return of said contracts to the respective owners.

VIII. It is mutually covenanted and agreed by the parties hereto that time is the essence of this contract, and that as all the differences between the parties hereto have been satisfactorily adjusted, the provisions and conditions relative to an arbitrator, mentioned and provided for in the collateral agreement of September 26th, A. D. 1911 is hereby abrogated and is declared to be null and void and of no further effect, and upon any default or defaults of the parties of the second part of any of the terms and conditions herein provided for, at the time and manner herein provided, this agreement shall be construed as an irrevocable order upon said depositary to return the unsold bonds of the District mentioned in paragraph (d) of section 5, and also the bonds mentioned in paragraph (c) of section 5 of said contract of September 12, A. D. 1911, as the order or orders of said District may specify; PROVIDED, however, that any legal proceeding or proceedings instituted by the District, its directors, officers or land owners, restraining the parties of the second part from performing this contract shall be construed as leaving the matters involved in this contract in statu quo during the pendency of such action or actions, unless there has been a prior breach thereof by the parties of the second part; provided further that at the option of the District such restraining order or orders, procured upon suit other than by the said District, shall not extend

the times of such payment or payments more than sixty days from the specified time for making the same.

IX. It is further understood and agreed by the parties hereto that payments of money to the Fort Dearborn Trust and Savings Bank to the credit of the Emmett Irrigation District, or for its benefit, shall be treated and considered in all respects as payments to the District.

It is further agreed that when the parties of the second part take up and pay for the balance of said unsold bonds mentioned in paragraph I above, they shall be entitled to turn in as cash interest warrants of the District to a total amount of the moneys received by the District from the said Continental Commercial Trust and Savings Bank, and all accrued interest from bond sales.

X. It is further agreed between the parties hereto that said depositary be instructed to notify the District as to the amount of all payments on account of accrued intereston said District bonds, and the District agrees that it will place such funds in the bond interest account and that it will not use the same for construction purpose.

XI. For convenience this instrument shall be executed in triplicate, each of which copies shall be deemed an original, and one copy shall be transmitted to said Depositary, Fort Dearborn Trust and Savings Bank.

XII. It is understood between the parties that the disbursement of the Thirty Thousand ($30,-

000.00) Dollars through The Boise City National Bank of Boise, Idaho, as provided in paragraph II of this instrument, is to be alone upon the order of the President and Secretary of said District, and without instruction as to the purposes for which said funds are to be used.

XIII. It is further understood and agreed that the second parties will cause the release, under seal, properly acknowledged, by the Canyon Canal Company, of all outstanding water contracts existing between said Canyon Canal Company and all the land owners in said District, which said water contracts are not included in the trust agreement from the District to Chicago Title and Trust Company and Charles G. Frank both of Chicago, Illinois, which said trust agreement was executed by the District in February 1912, and is now of record in Canyon County, Idaho, it being the intention hereby to secure the immediate release by said Canyon Canal Company of all outstanding water contracts upon lands in said District not enumerated in said trust agreement. Such release, properly executed, shall be deposited with the said depositary upon the execution and delivery of this agreement and upon the payment of the said sum of Thirty Thousand ($30,000.00) Dollars, such release to be transmitted by the said depositary to the District.

A portion of the bonds were delivered under an agreement bearing date April 5th, 1913, between Emmett Irrigation District, party of the first part and Corkill & Company parties of the second part,

which agreement I now hold. Whereupon, said agreement which was duly executed was offered and admitted in evidence, the same being as follows:

I.

THE DISTRICT AGREES;

(a) To use its best efforts to secure without delay the confirmation by the District Court of the Seventh Judicial District of the State of Idaho for Canyon County of the assessments and apportionment of benefits made by the Board of Directors of the said District under the first issue of One Million One Hundred Thousand Dollars ($1,100,000.00) of the bonds of said District.

(b) To sell to the Company Two Hundred Thousand Dollars ($200,000.00) par value, of the legally issued coupon bonds of the said first issue of the bonds of said District, such bonds to be deposited with the Fort Dearborn Trust and Savings Bank of Chicago, Illinois, with instructions to deliver to the Company, upon payment of par and accrued interest, in installments as follows, to-wit:

On or before September 1st, 1913, not less than Twenty Thousand Dollars ($20,000.00) and not less than Twenty Thousand Dollars on the first day of each and every month thereafter until the Company has taken and paid for the full amount of Two Hundred Thousand Dollars of said bonds.

(c) To Deposit with the aforesaid Fort Dearborn Trust and Savings Bank, before the first day of July, 1913, the semi-annual interest maturing on said first day of July, 1913, on all bonds of the Dis-

trict then outstanding, and to promptly pay at maturity the semi-annual interest maturing January 1, 1914, on all bonds of the District outstanding on said date.

(d) To pay to the Company Five Thousand Dollars ($5,000.00) upon receipt of the first payment of Twenty Thousand Dollars on the purchase of said Two Hundred Thousand Dollars of bonds, and a like amount on receipt of each and every subsequent payment made by the Company, such payments to be applied on the amount due the Company on certain warrants now held by the Company, aggregating approximately Twenty-Four Thousand Seven Hundred Eighty-three Dollars ($24,783.00), par value, dated July 1, 1912, and bearing interest at the rate of seven per cent. (7%) per annum, and also upon certain interest coupons maturing January 1, 1913, and detached from the bonds of the District outstanding at said date, which said interest coupons aggregate approximately Twenty Six Thousand Three Hundred Twenty-eight Dollars ($26,328.00) and bear interest at the rate of seven per cent. per annum from the first day of January, 1913; said payments by the District to continue until the said warrants and coupons with the interest thereon have been fully paid, but in the event the Company shall purchase and pay for more than Twenty Thousand Dollars par value of bonds during any one month, the said payments by the District shall be increased so as to equal twenty-five per cent. (25%) of the amount of the bonds taken

and paid for by the Company during such month; and upon receipt of the last installment of said purchase price, the District shall pay the full amount of the balance due the Company on account of said warrants and coupons. All payments shall be made through said Fort Dearborn Trust and Savings Bank, and proper credit shall be made on the warrants, and as any warrant or coupon, with interest thereon, is fully paid the same shall be cancelled and returned to the District.

II.

THE COMPANY AGREES:

(a) To purchase at par and accrued interest Two Hundred Thousand Dollars ($200,000.00) par value, of the first issue of the legally issued coupon bonds of said District, and to pay for the same in installments as hereinbefore stated, to-wit:

Not less than Twenty Thousand Dollars ($20,000.00) and accrued interest, on or before the first day of September, 1913, and not less than Twenty Thousand Dollars and accrued interest on or before the first day of each and every month thereafter until the said total amount of Two Hundred Thousand Dollars par value, and accrued interest, (but not including matured coupons) has been taken and paid for.

(b) To deposit with the Fort Dearborn Trust and Savings Bank of Chicago, Illinois, simultaneously with the deposit by the District of the interest maturing July 1, 1913, on the bonds of said District, but only upon ten days' notice that the District is

prepared to make such deposit and only upon condition that the apportionment or assessment of benefits against the lands in the District shall have been confirmed by the said District Court in the form and manner required by the laws of the State of Idaho, all warrants issued to the Company by the District, being three in number, dated January 1, 1913 and aggregating at par Twenty Four Thousand Seven Hundred Eighty-Three Dollars, and bearing interest at the rate of seven per cent. (7%) per annum, being the warrants hereinbefore mentioned; also all coupons aggregating approximately Twenty Six Thousand Three Hundred Twenty-eight Dollars, maturing January 1, 1913, and detached from the said first issue of the bonds of said District, also hereinbefore mentioned, such warrants and coupons to be held by said Fort Dearborn Trust and Savings Bank during the life of this agreement (except as they may from time to time be paid and cancelled and returned to the District as herein provided), as a guarantee for the faithful performance by the Company of its agreement to purchase and pay for said bonds in installments as hereinbefore set forth. And upon the failure of the Company to take and pay for Twenty Thousand Dollars, par value, and accrued interest (but not including matured coupons) of the said bonds of the District, on or before the first day of each and every month, commencing September 1, 1913, and continuing until it has taken the said full amount of Two Hundred Thousand Dollars and accrued interest, the

said Fort Dearborn Trust and Savings Bank shall be authorized and directed, and it is hereby authorized and directed to deliver to the District immediately upon such default on the part of the Company, the said warrants and coupons, and the remaining unsold bonds and the said warrants and coupons shall thereupon become the absolute property of the District, and the Company shall forfeit all right thereto and to the moneys due thereunder.

(c) To use its best efforts to secure the release of all water contracts covering lands in the District which are now held in trust by the Chicago Title and Trust Company, under a trust agreement between said Company and the District; and the time allowed the District in which to secure the confirmation of the assessments and apportionment of benefits by the said District Court shall be extended after the time limits herein fixed for a period equal to the delay in securing the release or cancellation of said water contracts.

III.

IT IS MUTUALLY AGREED:

(a) That the obligations of the Company to purchase or take bonds of the District and to deposit and keep on deposit with the said Fort Dearborn Trust and Savings Bank the said warrants and coupons, or to do any other thing required of it hereunder, are expressly conditioned and dependent upon the faithful performance by the District, at the time and in the manner herein contemplated, of the covenants and obligations herein contained and by it to

be kept and performed, and upon the prompt and punctual payment of the interest on the bonds now outstanding, or that may be outstanding during the term of this agreement; and upon default by the District in any of its covenants hereunder the Company shall at its option be released from all obligations hereunder and the said warrants and coupons, (excepting such as may have been paid, cancelled and returned to the District), deposited with the said Fort Dearborn Trust and Savings Bank for the faithful performance of this agreement on the part of the Company, shall, at the option of the Company and upon its demand, be returned and delivered to the Company; but the District shall be given due credit for all payments made thereon.

(b) That the Company may deduct from the amounts paid the District monthly on account of the purchase of said bonds the amount payable to the Company, as hereinbefore provided, on account of the said warrants and coupons deposited with the Fort Dearborn Trust and Savings Bank, as aforesaid, and remit to the District the balance only of such payments; and the District agrees in such event to make proper credit on its books by transfer from the interest or Maintenance fund to the Construction fund of the amount payable to the Company and retained by it from the payment due the District on account of the purchase of said bonds and out of the last payment due the District on account of said purchase, the Company may deduct the sum or balance required, if any, to fully pay

and discharge such warrants and coupons, held as aforesaid, with interest thereon.

(c) That all agreements heretofore entered into between the parties hereto, relative to the purchase and sale of the bonds of the District, are hereby cancelled, annulled and superseded by this agreement, and the relations of the parties hereto shall from henceforth be determined, settled and adjusted according to the terms of this agreement, and each of the parties hereto, for the consideration aforesaid, does hereby release the other, its successors and assigns, of and from each and all obligations contained in any and all agreements heretofore entered into relative to the purchase and sale of said bonds, and from all damages, claims, demands, actions, causes of actions, controversies and accounts of whatsoever kind, growing out of or which might or could arise or accrue from or under or by reason of any contract or agreement heretofore entered into by the parties hereto.

(d) That the Company shall on or before the 15th day of April, 1913, deposit with the said Fort Dearborn Trust and Savings Bank the warrants hereinbefore mentioned, dated July 1st, 1912, and aggregating approximately Twenty Four Thousand Seven Hundred Eighty-three Dollars, as a guarantee that it will and can comply with the provisions of sub-paragraph (b) of paragraph II hereof relative to the deposit of said warrants and the coupons therein mentioned, upon deposit by the District before July 1st, 1913, of the interest maturing on said date on its then outstanding bonds. But it is ex-

pressly agreed that if the District fails to secure the judgment or decree of the District Court confirming the apportionment or assessment of benefits by the 15th day of June, 1913, then and in that event the said Fort Dearborn Trust and Savings Bank shall return said warrants to the Company, and the latter shall thereupon be released of all obligations hereunder. But if the assessment and apportionment of benefits be confirmed by the Court, to the extent and in the manner required by the laws of the State of Idaho in such cases, on or before the 15th day of June, 1913, then the said warrants shall be held by the said Fort Dearborn Trust and Savings Bank as a guarantee that the Company will comply with the terms of said sub-paragraph (b) of paragraph II hereof. And upon failure of the Company to so comply, the said Fort Dearborn Trust and Savings Bank shall deliver said warrants to the District and the Company shall thereupon forfeit all right thereto and to all moneys due thereunder.

(e) That should an appeal be taken from the decree of the District Court confirming the apportionment of benefits, the time within which the said installments of the purchase price of said bonds shall be made by the Company shall be extended for a period equal to the time intervening between the filing of the Notice of Appeal and the filing of the remittur of the Supreme Court. And in the event the Supreme Court should reverse or set aside said decree, or in the event the decree confirming the apportionment of benefits has not become final by the

first day of November, 1913, the Company shall, at its option, be released of all obligations hereunder, and the said Fort Dearborn Trust and Savings Bank shall return to the Company, upon demand, the warrants and coupons deposited with it as aforesaid, and shall return to the District the said bonds.

Parties of the second part caused to be assigned to us an unsecured claim or claims of the Canyon Canal Company held by Trowbridge and Niver Company, by delivering the same to us in accordance with section two, page 4 of the contract of September 12, 1911, which assignment we still have in our possession. The opinion of Adams & Candee, mentioned in the first paragraph, at the top of page five of the contract of September 12, 1911, was deposited with us, bearing date April 8, 1912, signed by Adams, Candee, Steere & Hawley, successors to Adams & Candee, a true and correct copy of which is as follows, to-wit:

"Law Offices
Adams, Candee, Steere & Hawley
515 Monadnock Block
Chicago

April 8, 1912.

We hereby certify that we have examined certified copies of the records of the Board of Directors of EMMETT IRRIGATION DISTRICT, a municipal irrigation district organized and existing under and by virtue of TITLE 14 of the Revised Codes of Idaho, in the County of Canyon, in the State of Idaho, relating to the issue by said District of its negotiable Six Per Cent Coupon Bonds, dated January 1,

A. D. 1911, aggregating One Million One Hundred Thousand Dollars ($1,100,000) in amount, consisting of 262 bonds of the par value of $1,000 each, 1,646 bonds of the par value of $500 each, and 150 bonds of the par value of $100 each, all of which bonds mature serially from January 1, A. D. 1922, to January 1, A. D. 1931, inclusive, and we are of the opinion that said Municipal Irrigation District had lawful authority for the issuance of said bonds under the laws of the State of Idaho, now in force.

We have also examined the form of bond adopted by the Board of Directors of the District for such issue and approve of such form and we are of the opinion that said bonds are the valid, legal and binding obligations of said District, and that the patented land, the interest of the respective owners of the lands held by the certificates of sale by the State of Idaho and in the lands entered but not yet patented, comprising said District, are subject to the lien of a tax to pay the same.

We have also examined a certified copy of the transcript of the proceedings for the organization of said District and all of the proceedings taken for the issuance of the bonds of said District which have been judicially examined, approved and confirmed by the Supreme Court of the State of Idaho (see Volume 113 Pacific Reporter, page 444).

(Signed) ADAMS, CANDEE, STEERE & HAWLEY

To J. J. Corkill & Company,
Fort Dearborn Trust and Savings Bank,
Chicago, Illinois."

Bonds delivered up to September 12, 1912, were delivered in accordance with the provisions of the contract dated September 12th, 1911 and thereafter, up to April 5th, 1913, in accordance with the original contract as amended by the contract of September 12th, 1912, and after April 5th, 1913, in accordance with the provisions of the original contract as amended by both the supplemental contracts.

I know the work required and expense incurred in exchanging Canyon Canal Bonds for bonds of the Defendant District. I have no means of knowing the exact amount of money expended or the efforts expended therein, but I do know it was considerable. It required a great amount of correspondence on the part of the depositary, and it required personal visitation and solicitation on the part of the employees of Corkill & Company. We were in daily communication during this time with Corkill and his employees relative to the exchange of these bonds; $599,000.00 in amount of Canyon Canal securities were deposited with us for the purpose of exchange under the provisions of the following form of agreement:

"KNOW ALL MEN BY THESE PRESENTS, That Whereas, the Canyon Canal Company, a corporation organized under the laws of the State of Idaho has heretofore made, executed and issued certain bonds and notes as follows:

Three Hundred and Fifty Thousand Dollars ($350,000) First Mortgage Six Per Cent Gold Bonds

numbered from one (1) to six hundred and twenty (620) inclusive, dated June 15,1905, and secured by a mortgage or deed of trust of the same date, which said bonds were due serially, beginning July 1, 1907, and ending July 1, 1916, and of which One Hundred and Seventy Thousand Dollars ($170,000) in amount are now autstanding and unpaid;

One Hundred Thousand Dollars ($100,000) Second Mortgage Bonds, dated July 1, 1906, secured by a collateral trust mortgage to THE AMERICAN TRUST AND SAVINGS BANK, as Trustee, and certain collateral securities deposited thereunder and held by the said Trustee, which said bonds are all now outstanding in default and unpaid;

One Hundred Thousand Dollars ($100,000) Collateral Trust Notes, dated December 15, 1908, and secured by a trust agreement with the AMERICAN TRUST AND SAVINGS BANK, of the same date, and certain collateral securities deposited with the Trustee thereunder, a portion of which said notes are now due and in default;

Two Hundred and Fifty Thousand Dollars ($250,-000) Collateral Trust Notes, dated May 1, 1909, and secured by a collateral trust agreement with the AMERICAN TRUST AND SAVINGS BANK, dated April 20, 1909, of which $200,000 are now outstanding, on which said notes default has been made in the payment of interest;

And whereas, the EMMETT IRRIGATION DISTRICT, a Municipal Corporation, organized under the laws of the State of Idaho, and comprising and

containing the land irrigated by means of the irrigation system of the said CANYON CANAL COMPANY, proposes to purchase and take over the said irrigation system and to improve and extend the same, and for such purpose has authorized an issue of bonds of the DISTRICT to the amount of One Million, One Hundred Thousand Dollars ($1,100,000); and

Whereas, arrangements have been made for the purchase by the said EMMETT IRRIGATION DISTRICT of all of the properties of the said CANYON CANAL COMPANY and the delivery of certain of the bonds above mentioned in payment therefor to an amount sufficient to enable the said CANYON CANAL COMPANY to exchange bonds of the said Irrigation District for all of the said outstanding bonds and notes of the said CANYON CANAL COMPANY, NOW, THEREFORE,

THE UNDERSIGNED, being the owner and the holder of the following bonds and notes of the issues of the said CANYON CANAL COMPANY hereinabove described, namely:

.....Dollars ($) of the said first Mortgage Six Per Cent Gold Bonds, dated June 15, 1905, numbered..... .....Dollars ($) of the said Second Mortgage Bonds, dated July 1, 1906, numbered..... ....Dollars ($) of the said Collateral Trust Notes, dated December 15, 1908, numbered .....Dollars ($) of the said Collateral Trust Notes, dated May 1, 1909, numbered.....

.....does hereby agree to accept in exchange for his said bonds and notes bonds of the said EMMETT IRRIGATION DISTRICT, above mentioned, of par value equal to the par value of his said bonds and notes, provided, however, the legality of the said municipal irrigation district bonds shall be approved by Adams & Candee, Attorneys of Chicago, Illinois.

Such exchange shall apply only to the principal of his said bonds and notes. The undersigned is to be paid in cash all accrued interest now remaining unpaid on his said bonds and notes, deducting therefrom, however, all interest accrued on the next maturing coupon of the said Irrigation District Bonds, and the undersigned does hereby agree to deposit with the FORT DEARBORN TRUST AND SAVINGS BANK OF CHICAGO, ILLINOIS, his aforesaid bonds and notes for the purpose of effecting the said exchange, such exchange to be made without expense to the undersigned of any kind or nature whatsoever.

And the undersigned does hereby authorize the Committee heretofore acting on behalf of the holders of the said Notes dated December 15, 1908, and May 1, 1909, to deposit with the said FORT DEARBORN TRUST AND SAVINGS BANK, for the purpose hereinbefore stated, such of his said Notes and Bonds as the undersigned had heretofore deposited with the Chicago Title & Trust Company, under the Noteholders' agreement with the said Committee.

Name .....

Address .....”

All the securities of the Canyon Canal Company, mentioned in said agreement of September 12, 1911, were delivered to us under an agreement substantially in the foregoing form.

CROSS-EXAMINATION BY MR. WOOD

All the bonds were signed by the same names, Mr. Bell as President and Mr. Worthman as Secretary. Some months previous to the delivery of the district bonds work was under way for their exchange for the securities of the Canyon Canal Company. The old securities were deposited with the Fort Dearborn Trust and Savings Bank—whereupon we issued certificates of deposit therefor, exchangeable for the District bonds when available. All Canyon Canal securities were assembled before any exchanges were made. The District bonds were delivered by the Depositary to the owners of the Canyon Canal Bonds soon after March 1st, 1912—within a few days. That delivery involved approximately $600,000 in amount of the District bonds.

At that time we delivered Corkill & Company approximately $150,000 of District bonds but had delivered Corkill & Company none prior to that time. It would not be possible from our records to ascertain what bonds we gave Corkill & Company, which would be identified as the item of approximately $150,000, at the time he made the exchange with the holders of the Canyon Canal securities. All the bonds aside from the $600,000 involved in the exchange were delivered to Corkill & Company. We have no memoranda by which we could identify

the numbers or denominations of any specific delivery of bonds to Corkill & Company. Some of the $600,000 exchanged were delivered to Corkill & Company for other people. We have a record of the bonds passing out of our hands after the $750,000 exchange was made. A strict account of the numbers was not kept, for Corkill & Company were continuously exchanging bonds for bonds of different denominations or maturities. It does show the amount of the par value of the bonds that were taken out from time to time. Aside from the denominations and dates and maturities the bonds were all alike. I think we still have a record at present of the names of the persons receiving the bonds of the Emmett Irrigation District in exchange for the securities of the Canyon Canal Company. I decline to produce a list of those purchasers or the persons receiving these bonds, for I do not feel that we should exhibit the list, for the reason that we had an understanding at the time the trust was taken over that the matter would be treated from a fiduciary standpoint, and especially in regard to the names of the persons from whom we received the Canal securities. After the first exchange of $600,000 was made, all bonds were delivered to Corkill & Company and no record of purchasers was made. The first cash paid in by Corkill & Company for bonds delivered to them was March 4, 1912. I have no record of what bonds they obtained at that time. When a delivery of bonds was made to Corkill & Company they were given their choice as to

what particular bonds they were to have, insofar as the same could be complied with. They could have been bonds all maturing upon one date, or apportioned over a considerable portion of the maturity periods. It was left entirely to their selection. There was no attempt on the part of the depositary to pro-rate or proportion any given issue of the bonds with reference to any dates of maturity. This applies to the entire issue. The money for the payment of the January 1st, 1912, interests and the July 1st, 1912 and January 1st, 1913, interest was received from Corkill & Company.

The January 1st, 1912, July 1st, 1912, and January 1st, 1913, were paid by funds furnished by Corkill & Company and the July 1st, 1913, payment, amounting to $26,328, was paid by funds received from the District. No other direct payment on account of interest was made by the District.

There was no particular classification ever made of the bonds designating the particular bonds to be used for any of the various purposes mentioned in the original contract. We delivered $20,000 in bonds of the District to Corkill & Company under the contract introduced in evidence, bearing date April 5th, 1913, as their first payment under that contract. Corkill & Company made no payments under the contracts after September, 1913.

RE-DIRECT EXAMINATION

We received from the American Trust and Savings Bank, Trustee under the various mortgages securing the Canyon Canal securities, the cash men-

tioned in section eight of the contract of September 12, 1911, and put it to the credit of the Emmett Irrigation District.

RE-CROSS-EXAMINATION BY MR. WOOD

Corkill paid in $30,000 and interest and received $37,500 par value of bonds under the second contract of September 12, 1912. All the bonds delivered to Corkill & Company were delivered under the original contract of September 12, 1911, except those delivered under the contract of September 12, 1912, and the contract of April, 1913.

R. B. SHAW was then called as a witness in behalf of said plaintiffs, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAGA

I am R. B. Shaw and have resided 13 years at Emmett, Gem County, Idaho. I am, and have been treasurer of the defendant District since February, 1913, and have the custody of the funds of the District. I have an interest fund for the payment of bond interest, containing approximately $8,000.00. It is made up from the collection of the 1913 levy for bond interest. The total levy was more than I have in the fund. It was about five per cent on the present outstanding bonds, which bonds amounted to $900,000.00. Rather it was 6 per cent on the amount of the sale. I have not paid any interest coupons from the fund. Because the Board ordered not to pay it. The coupons of the plaintiffs in this case were presented for payment and payment refused. An aggregate of coupons maturing July 1st

and January 1st, 1914, on bonds outstanding would be approximately $54,000. There was probably $2,000.00 less in the funds at the time the coupons were presented than there is now.

H. HAYLOR, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAGA

I am H. Haylor and reside at Emmett, Idaho. I am secretary of the defendant District, succeeding Mr. Worthman. Have been secretary ever since. I have here the minute books of the meetings of the board of dirctors for the years 1914 and 1915 and 1916. No interest levy was made in the year 1914 by the board of directors to pay interest on the outstanding bonds of the District. A resolution was passed with relation to the matter at an adjourned regular meeting on October 31st, 1914, recorded on page 29 of the minute book. Which said minutes were then read by the witness in evidence, without objection. The same being as follows:

> "Whereas a prior board of directors of the Emmett Irrigation District on the 12th day of September, 1911, made a contract to dispose of certain bonds of the Emmett Irrigation District, a copy of which contract is found in minute book No. 1, pages 57 to 64 inclusive, records of the Emmett Irrigation District, and it appears to the board that said prior board entered into said contract without the advice of an attorney, and this board being advised by the attorneys of the

District that said contract amounted to a disposition of the bonds for the sum of eighty per cent. of the par value of said bonds, and that said bonds were disposed of by said prior board without any consideration, and that certain other bonds were disposed of for a consideration, but that no record whatever was made by the district of the disposition made of said bonds, so that the district is without any means of determining which bonds were disposed of for a consideration and which bonds were disposed of without a consideration, leaving this board of directors absolutely without information as to which bonds of said issue were disposed of without a consideration and which bonds were disposed of for a consideration, and the board, after a careful inquiry and investigation to obtain same has failed to obtain such information.

"And, whereas, it appears to the board that certain bonds were disposed of without a consideration, and it further appears that a suit has been commenced against the Emmett Irrigation District in the District Court of the United States for the District of Idaho, Southern Division, by A. N. Gaebler, for the payment of certain coupons and certain bonds of the District, and that the records of the Emmett Irrigation District are public records, open to the inspection of the public, and that the Emmett Irrigation District is a public corporation, and any person dealing with it is permitted to go to the records

of the district, and that if any purchaser of its bonds had gone to the records of the district he would have found that said bonds were disposed of without any record. And, whereas, this board of directors has not paid any interest coupons upon any bonds of the district from any assessment levied for the payment of interest on the bonds of the district, and has refused and now refuses, to pay any such coupons, until the court shall have determined the liability of said district upon said bonds, and further to determine which bonds were legally disposed of and which bonds were not legally disposed of.

"Now, therefore, be it resolved that the board of directors, upon the advice of the attorneys of the district, will not levy any assessment to pay the coupons of any bonds of the district, until the court shall have determined the liability of the district. That this board do now adjourn without levying any assessment for the payment of interest upon the bonds of the Emmett Irrigation District.

"A vote was taken, which resulted as follows: Aye, W. H. Shane, N. B. Barnes, E. J. Reynolds. Whereupon the president declared the resolution adopted."

Similar action was taken in 1915, and no action in 1916.

W. H. SHANE, was called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAGA.

I am W. H. Shane and have resided at Emmett for the last nine years and a land owner in the defendant district. Am a director and chairman of the board of directors of said district. I have been chairman four years. Had been director about a year and a half prior to that. There are some delinquencies in both interest and maintenance taxes in the district.

The deposition of J. EVERTON RAMSEY, heretofore taken, pursuant to stipulation of the respective parties plaintiff and defendant, as a witness in behalf of plaintiffs, was then read by counsel for plaintiffs. The said J. Everton Ramsey, being first duly sworn, testified in said deposition as follows:

DIRECT EXAMINATION.

I am J. Everton Ramsey, reside at Swarthmore, Pa.; am treasurer of Lincoln University and have been for thirty years or more. Lincoln University has been a corporation for more than 50 years. It acquired 10 bonds of the Emmett Irrigation District in denominations of $500 each and numbered D583 to D592, inclusive, aggregating $5,000.00, and all unpaid interest coupons thereon, for which it paid value, and still own same. An inquiry was made as to the legality. I had furnished me the legal opinion of Messrs. Adams & Candee of Chicago, and understood, also, that the Supreme Court of the State of Idaho had passed favorably upon the bonds, and assumed that the statements contained in the bonds as to their legality were true.

CROSS EXAMINATION.

Lincoln University acquired the bonds July 11, 1912, from Corkill & Company, Brokers, Chicago, Illinois, and paid the purchase price in full on that day. Ninety-two and one-half and interest was paid as purchase price. The price seemed to me about right for this class of security. I bought about this time a number of other irrigation district bonds and all of them at a discount from par. Some as low as 90. The consideration was in cash in the sum of $4,631.66. No part of the consideration was obligations of the Canyon Canal Company. I, personally, conducted the purchase and knew nothing of the terms and conditions upon which the bonds were delivered by the District to the Fort Dearborn Trust and Savings Bank of Chicago. I had communicated with Corkill & Company with reference to the bonds. It was a letter dated May 29th, 1912. The letter is the same letter set forth in the foregoing testimony of J. Everton Ramsey, as President of the Chester County Trust Company.

The deposition of J. Everton Ramsey, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness in behalf of plaintiffs, was then read by counsel for plaintiffs, and the said J. Everton Ramsey, being first duly sworn, testified in said deposition as follows:

DIRECT EXAMINATION.

I am J. Everton Ramsey, and reside at Swarthmore, Pennsylvania. I have been president of the Chester County Trust Company, West Chester, Pa.,

some eight years. Chester County Trust Company is a corporation, incorporated in 1900.

The Chester County Trust Company acquired twenty bonds of the Emmett Irrigation District, in denominations of $500, and numbered D569 to D578, inclusive, and D717 to D726, inclusive, aggregating $10,000, and all unpaid interest coupons thereon. It paid value therefor and still owns the same.

Inquiry was made prior to acquisition of the bonds as to their legality. I had furnished me the legal opinion of Messrs. Adams & Candee of Chicago, and understood also that the Supreme Court of the State of Idaho had passed favorably on the bonds, and assumed that the statements contained in the bonds as to their legality was correct.

CROSS EXAMINATION.

The bonds were acquired July 3d, 1912, from Corkill & Company, brokers, Chicago, Illinois, and the purchase price paid July 3d, 1912, in full. The consideration given was ninety-three and one-half and interest. The price seemed to me about right for this class of security. I bought about this time a number of other irrigation bonds, and all of them at a discount from par. Some as low as ninety. At the same time I sold to Corkill & Company $10,000 Idaho-Oregon Light & Power Company 6s at par and interest.

The consideration did not consist in whole or in part of the obligations of the Canyon Canal Company. I, personally, conducted the purchase. I first saw the bonds at the time of purchase and knew nothing of the terms and conditions upon which the

bonds were delivered by the Emmett Irrigation District to the Fort Dearborn Trust and Savings Bank of Chicago.

I had the following communication from Corkill & Company with reference to the bonds at or about the time the date the same bears:

"CORKILL & CO.
112 So. LaSalle St.,
Chicago.

May 29, 1912.

"J. Everton Ramsey, Esq.,
President, Chester County Trust Company,
West Chester, Pa.

"Dear Sir:

We beg to acknowledge your valued favor of the 27th inst., in reference to the Emmett Municipal 6% bonds. The Rand McNally Directory evidently gives the census of 1900. The population is given locally by the banks as between 2500 and 3000. The town has four school districts and one high school and had 981 children attending the first day of May, 1912. You can readily see that the figures of 1351 is entirely out of proportion. 2800 is accepted as a conservative figure and anyone visiting the town will readily see that the population at least reaches that figure.

"Regarding Idaho-Oregon L. & P. bonds; you have been misinformed as to the likelihood of the bonds being called at 105 in the near future. They cannot be called until after April 1st, 1915. We consider the bonds good although the market for

them has been somewhat unsatisfactory, the company not being properly financed at the beginning. Recently some parties secured a power site near Emmett and threatened competition with the Idaho-Oregon people. This has killed the market for the bonds temporarily. We think, however, they will prove to be a good investment and inasmuch as we have sold a large amount of them, are willing to take a limited quantity in trade for our new issue. We thought the price of 101 was quite liberal, especially in view of the fact that your folks only paid 90.

"We are enclosing you herewith a copy of the legal opinion. The Engineering report is encumbered with a great many engineering descriptions of no interest to the bondholder. We intend to have a digest report made and printed as soon as Mr. Rosecrane of the Rosecrane Engineering Company is in town, and will send you a copy.

"If you will make an immediate exchange of the $13,000 Idaho-Oregon 6s for Emmett Municipal 6s we would be willing to extend the price for the Idaho-Oregon to 102. This price however, will not hold indefinitely as the market for the bonds is gradually declining, not because of any depreciation in value of the property but principally for the reason outlined above, competition.

"Awaiting the favor of an early reply, I am,

Very truly yours,

Corkill & Co."

The deposition of FRANK W. HORTON, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness in behalf of plaintiff, was then read by counsel for plaintiffs, and the said Frank W. Horton, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am Frank W. Horton, aged 51 years, residing at San Diego, California. I have no occupattion at present. I am a citizen of the State of California and I purchased five bonds of the Emmett Irrigation District, numbered M138 to M142, inclusive, each of the denomination of $1,000.00 and paid value for the same, and still own the bonds. Before I bought them I consulted with George B. Caldwell, Vice-president of the Continental Trust and Savings Bank of Chicago, in charge of their bond department, whom I considered a very good authority on bonds, and he showed me an opinion of Adams & Candee, attorneys in Chicago, who had approved the bonds and certified that they were the legal obligations of the District. Mr. Caldwell said he thought they were all right. From this and statements contained in the bonds themselves I concluded that the bonds were perfectly good and purchased them of the Fort Dearborn Trust and Savings Company, in person.

CROSS EXAMINATION.

I acquired them in 1911 or 1912, from the Fort Dearborn Trust Company, and gave in exchange for the five bonds bonds in 1911 or 1912. The consideration was not money, but $5,000.00 par value of the

Canyon Canal Company bonds. I do not know the exact valuation of the Canyon Canal bonds at the time I made the exchange. I had previously paid $5,000 cash for them. They were first mortgage bonds. I do not remember their dates or dates of maturity. I personally conducted the purchase and saw them for the first time at the Fort Dearborn Trust Company, where they were purchased. I knew nothing of the terms and conditions upon which the District bonds had been delivered to the Fort Dearborn Trust Company. They informed me it was the direct obligation of the District and I would receive par and accrued interest in trade for my bonds. I had no communication with Corkill or Corkill & Company with regard to the bonds prior to the date of purchase.

The deposition of S. Ralston Dickey, heretofore taken, pursuant to stipulation of the respective parties plaintiff and defendant, as a witness in behalf of plaintiff, was then read by counsel for plaintiffs, and the said

S. RALSTON DICKEY, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am S. Ralston Dickey and reside at Oxford, Pa., of the age of 66 years and president for the last 30 years or more of the National Bank of Oxford, which was organized under the laws of the United States January 4, 1865.

The National Bank of Oxford purchased 20 bonds of the Emmett Irrigation District, numbers D559

to D568, D707 to D716, aggregating $10,000.00 and all unpaid interest coupons thereon. It paid value therefor and still owns the same. An investigation was made as to the legality. I had furnished me the legal opinion of Messrs. Adams & Candee of Chicago, and understood, also, that the Supreme Court of the State of Idaho had passed favorably upon the bonds, and assumed that the statement contained in the bonds, as to their legality, were true.

CROSS EXAMINATION.

The bonds were acquired July 5, 1912, from Corkill & Company, Brokers, Chicago, Illinois, and payment made at that time in full. Ninety-three and a half and interest was given for the bonds. The price seemed to me about right for this class of security. I bought about this time a numer of other Irrigation District bonds, and all of them at a discount from par. Some as low as ninety. The consideration was other than money. We gave in exchange $10,000.00 in value Idaho-Oregon Light & Power and Ref. 6s. None of the consideration was obligations of the Canyon Canal Company. I conducted the purchase in connection with our vice-president J. Everton Ramsey, and knew nothing of the terms and conditions upon which the bonds were delivered by the District to the Fort Dearborn Trust & Savings Bank of Chicago. I had a communication from Corkill & Company with reference to the matter. The communication referred to was a letter dated May 29, 1912, from Corkill & Company to J. Everton Ramsey, President Chester County Trust Company.

Same identical letter set forth as a part of the testimony of said J. Everton Ramsey.

The deposition of Mary C. Waddell, heretofore taken, pursuant to stipulation of the respective parties plaintiff and defendant, as a witness in behalf of plaintiff, was then read by counsel for plaintiffs.

The said MARY C. WADDELL, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am Mary C. Waddell, aged 61, a citizen and resident of Albany, New York, and have no occupation. I acquired a bond of the Emmett Irrigation District of the par value of $1,000.00, numbered M228, for which I gave in exchange one bond of the Canyon Canal Company of the value of $1,000.00. I still own the District bond. I never made any inquiry or investigation as to the legality of the District bond.

CROSS EXAMINATION.

I acquired my bond during the month of October, 1911, from Trowbridge & Niver Company of Chicago, Ill., delivery being made through Fort Dearborn Trust & Savings Bank. I have no knowledge of the Canyon Canal Company bond surrendered. I paid $980.00 for it in March, 1906. The Canyon Canal bond was due in 1914. I cannot state the date of issue. I made the exchange personally.

The deposition of Charlotte H. Shipman, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness on behalf of plaintiffs, was read by counsel for plaintiffs.

The said CHARLOTTE H. SHIPMAN, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am Charlotte H. Shipman, aged 54 years, reside at Indianola, Iowa, formerly Hastings, Iowa, and a citizen of the State of Iowa, and by occupation a housewife. At the time of the death of my father, Joshua Manners, who was the owner of two thousand dollar bonds of the Emmett Irrigation District, I acquired one of the same by inheritance, the same being M224, which I still own. I took it at its face value as a part of my share in the settlement of the estate. I understood that the said bond was worth its full face value and that all proceedings were legal, and understood that the said bond was in all particulars legally issued, and that my father had in his life time paid full value therefor.

CROSS EXAMINATION.

My father died July 3, 1913, and I got the bond about December, 1913. No part of the consideration given for the bond was obligations of the Canyon Canal Company. I know nothing of the terms and conditions upon which the bond was delivered by the District to the Fort Dearborn Trust and Savings Bank. I have never had any communication with Corkill or Corkill & Company.

The deposition of Sanford H. Hudson, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness on behalf of plaintiffs, was read by counsel for plaintiffs.

The said SANFORD H. HUDSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am Sanford H. Hudson, aged 58, a citizen and resident of Benson, Minnesota, by occupation a lawyer. I acquired six bonds of the Emmett Irrigation District, of the par value of $4,000.00, four of which are of the par value of $500.00 each and numbered D179, D849, D1031 and D1492, and two of the denominations of $1,000.00 each, numbered M124 and M125, for all of which I paid value and am still the owner. I was familiar with the District through having formerly owned $5,500.00 par value of Canyon Canal Company bonds, which were taken care of at maturity, except $1,500.00, which were exchanged for District bonds, on representation that their legality had been established by the Supreme Court of the State of Idaho, and that all proceedings of the District prior to the issue of the same were regular. I also received a copy of a legal opinion of Attorneys in Chicago, whom I knew by reputation and in whose judgment I had confidence, to the effect that these bonds were legally and properly issued. I also received a book of views of the farms and homes included in the district and all of the above representations I believed to be true at the time I acquired said bonds.

CROSS EXAMINATION.

I acquired two of the bonds, aggregating $1500.00, through Corkill & Company, April 10, 1912, and 4

bonds, aggregating $2500.00, October 1st, 1912, from G. S. Spear of Chicago. All of which were paid for at the time of purchase. The consideration given was bonds of the Canyon Canal Company of the par value of $1500.00, and the bonds of the Mississippi Land & Lumber Company of the value of $2500.00. The valuation of the bonds exchanged was $4000.00. The Canyon Canal Company bonds were dated June 15th, 1905, due July 1st, 1913. I had no knowledge of the terms and conditions on which the bonds were delivered to the Fort Dearborn Trust and Savings Bank, nor to whom delivered, except as stated in the bonds themselves. I had correspondence with Corkill & Company of Chicago, who first called my attention to the organization of the Canyon Canal system by a printed circular addressed to the bondholders and soliciting the exchange of canal bonds for district bonds, but I cannot now produce copies thereof.

The deposition of Helen M. Conrad, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness on behalf of plaintiffs, was read by counsel for plaintiffs.

The said HELEN M. CONRAD, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am Helen M. Conrad, aged 70, residing at and a citizen of Ann Arbor, Michigan, by occupation housekeeper. I acquired four bonds of the Emmett Irrigation District, numbered D90, D91, D144 and D145 of the denomination of $500.00 each, for which I

paid full value, and still own the same. I made investigation of the legality of the bonds. Mr. Hale, agent of Corkill & Company, called on me, and another agent from the same company. Both of them urged me to take these bonds and assured me of their legality, stating that the bonds had been approved by the Supreme Court of the State of Idaho, and that all proceedings of the District were regular. A legal opinion was also furnished by Adams, Candee, Steere & Hawley of Chicago. In the original circular, issued by Corkill & Company, it was stated that the bond and the proceedings had been confirmed by the Supreme Court of the State of Idaho.

CROSS EXAMINATION.

I acquired the bonds the latter part of November, 1912, from Corkill & Company, and paid for same about November 28th, 1912. I gave in exchange Marysville Canal & Improvement Company bonds, which were valued at $2000.00, plus accrued interest. I gave no obligations of the Canyon Canal Company. I first saw the bonds at the time I paid for them. I knew nothing about any arrangement between the District and the Fort Dearborn Trust and Savings Bank. My communications for all were with J. J. Corkill & Company.

The deposition of J. Willis Gardner, heretofore taken pursuant to stipulation of the respective parties plaintiff and defendant, as a witness on behalf of plaintiffs, was read by counsel for plaintiffs.

The said J. WILLIS GARDNER, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am J. Willis Gardner, aged 53, a citizen and resident of Quincy, Illinois. I acquired the following bonds of the Emmett Irrigation District: Bonds numbered M88, M89 and M112, each of the denomination of $1000.00, and bonds numbered D547 to D550, inclusive, and D691 to D694, inclusive, each of the denomination of $500.00, for all of which I paid value and still own. Prior to acquiring same I was informed that they had been approved by the Supreme Court of the State of Idaho and that all proceedings were legal. I read the bonds or a copy thereof and also the opinion of Adams & Candee, who approved them.

CROSS EXAMINATION.

I acquired them in 1912 through J. J. Corkill & Company. The purchase price was paid in 1912, not in installments, and consisted of Canyon Canal Company bonds of the par value of $7,000.00. I do not know the exact market value of the latter at the time of the exchange, but I paid 95 for them. The Canyon Canal Company bonds were secured by a first mortgage on the property of the Canal company, dated June, 1905, and the maturity was 1922. I saw the District bonds a short time prior to purchasing them. I did not know the terms and conditions upon which they were delivered by the District to the Fort Dearborn Trust and Savings Bank. I had some communication with J. J. Corkill & Company, orally, at their Chicago office.

Whereupon, Mr. Haga, of counsel for plaintiffs,

stated that he had prepared a copy of the bond No. 298, which was thereupon marked Plaintiffs' Exhibit No. 2 for identification, and which he explained contained only a copy of one coupon, being the coupon due on January 2nd, 1924, but said all coupons are the same except as to date and maturity, which he requested be substituted for the said bond 298; and it was admitted by counsel for defendants that the coupon attached to copy was the same as other coupons, except as to the date of maturity. Whereupon, the said copy was substituted for bond No. 298.

Whereupon, W. H. SHANE, a witness previously sworn and examined, was recalled on behalf of plaintiffs, and testified as follows:

The defendant has operated and used, since the spring of 1912, the irrigation system referred to in the contract between the District and Corkill, dated September 12, 1911. The releases of the mortgages, trust deeds, issued by Canyon Canal Company, securing the obligations of that company to be taken up and exchanged or surrendered for district bonds under the contract were turned over, as I understand, to the depositary, but have not been furnished to the district. No attempt has been made to enforce any of them since the spring of 1912, as far as I know; nor has the district been disturbed in possession or enjoyment of the irrigation system. Mr. Glenney said he had a release of the Trowbridge & Niver claim, referred to in the contract, but I have never seen it.

CROSS EXAMINATION BY MR. DRISCOLL:

The District has operated and used the canal system since a year before 1912. They owned the system at the time the original contract of September, 1911, was made and were operating and using it at that time. The obligations of the Canyon Canal Company, to which I have referred in my direct examination, were water contracts—first mortgage bonds and water contracts. They were contracts between the settlers and the Canyon Canal Company and were obligations signed by the various land owners in the district to the Canal Company for purchasing water. The Trowbridge and Niver claim was for money that they claimed they had spent in remodeling and rebuilding the irrigation system, over and above the $600,000 indebtedness that was supposed to be against it. It purported to be an indebtedness on the canal company to Trowbridge & Niver for that purpose.

Whereupon, Mr. Haga stated that it was not only an indebtedness of the Canyon Canal, but that Trowbridge & Niver claimed by virtue of the Carey Act they had a lien against the system, because the system cost more than the water contracts which they already had.

Whereupon, it was stipulated by counsel that the Canyon Canal Company was a construction company under the Carey Act, and the Emmett Bench Canal Company was the settlers' holding company under the same Act.

RE-DIRECT EXAMINATION BY MR. HAGA:

The District has not been harrassed or threatened with any foreclosures of the mortgages given by the Canyon Canal Company on the canal system. As far as I know, these old mortgages and the bonds they secured have been released. As to the amount of the Trowbridge & Niver claim to be released under the contract, I only know what Corkill & Company said it was, which I believe was $450,000.00.

ADOLPH N. GAEBLER, called as a witness in behalf of plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAGA:

I am Adolph N. Gaebler, residing at St. Louis, Missouri, a citizen of said State. Also a plaintiff in this action and the owner of bonds of defendant District, in an amount par value of $47,500. The numbers of my bonds is correctly stated in the amendment to the bill of complaint. I am the owner of all the unpaid coupons belonging to these bonds. I bought twenty thousand dollars of the bonds August 1st, 1912, for $16,500.00, cash, which was at the rate of eighty-two and a half cents; and the remainder, $27,500.00, on June 24th, 1913, for which I exchanged bonds and received cash, to-wit: I received $27,500.00 worth of defendant district bonds and $837.50 in cash for $10,000.00 Twin Falls North Side Land and Water Company sixes, and $10,000.00 Twin Falls Oakley Land and Water Company sixes, and $7,500.00 Twin Falls Salmon River Land and

Water Company sixes, for all of which I had paid par, and considered them worth what I had paid for them.

CROSS EXAMINATION BY MR. WOOD:

I don't know what the market value of the Twin Falls bonds exchanged was at the time of the exchange. I bought them a year or two before the exchange.

All the first purchase in District bonds were in five hundred dollar denominations.

The following are the numbers of the last purchase, of $27,500.00, to-wit:

"Bond numbered D345, D346, D347, D348, D298, D349, D350, D351, D352, D353, D383, D384, D385 D386, D387, D493, D494, D495, D496, D497, D598, D637, D638, D639, D640, D641, D642, D643, D789, D790, D791, D792, D793, D794 to D800, inclusive, D850 to D855, inclusive, D1055 to D1058, inclusive, D1300 to D1304, inclusive."

I purchased the first lot of $20,000 of Corkill & Company and delivery was made at St. Louis. I am the owner of a tract of land in the defendant district, and was led to buy after my friend, Col. Hunter, referred me to these bonds, saying, as long as I was the owner of a piece of land at Emmett I ought to own some of the bonds. He said they were perfectly legal and valid and for that reason I bought them. I was at Emmett when Col. Hunter made the representation. I knew the office of the district was in Emmett at the time but made no investigation there as to the record in any way involving this bond issue.

I did not know that Corkill & Company were handling the bonds nor acting as brokers for the bonds. I do not remember a conversation had in the Bank of Emmett before I purchased the bonds in the presence of Mr. Hunter and Mr. Shane, when Mr. Shane said to Mr. Hunter in my presence to be sure that Dr. Gaebler got his bonds he was going to purchase from Corkill from the Fort Dearborn Trust & Savings Bank, because that was the only way by which the District would get any money out of the purchase. No such conversation took place, I never saw Mr. Shane until yesterday. Mr. Shane did not further in that conversation in my presence state that if I got the bonds from Corkill I would be purchasing his bonds, which were contested and objected to as commission bonds, and the district would get no money to further improve the canal. Mr. Shane did not substantially repeat the same statement to Col. Hunter in my presence on the same day at Emmett, when I was about to start for Boise. No such conversation took place. I was at Emmett a few days before I received the bonds. I was notified my bid was accepted when I got back to St. Louis. I gave the bid to Colonel Hunter at Emmett and Corkill & Company notified me the bid was accepted. The bid was eighty-two and a half. I didn't know where the bonds were being purchased and didn't care. Colonel Hunter told me there was a matter between the District and some of its underwriters with regard to the contract, and he told me that wouldn't affect them at all. I wouldn't have bought them if I thought

there was a cloud upon them. I made no further investigations as to the statements of Colonel Hunter. I did not know Corkill & Company existed until after I got the bonds. The bonds were shipped from Corkill & Company. I got the second lot of bonds from Corkill & Company. I did not know anything more about a controversy between Corkill and the District at this time than I did when I bought the first lot. The interest coupons were paid, I thought by the District. I made no investigation. The second transaction was made exclusively with Corkill & Company. I didn't know that a District could only sell its bonds for cash. I didn't care or think it was necessary to inquire. Colonel Hunter is dead. The second purchase was made in St. Louis from a representative of Corkill & Company who came to my office and made the offer to exchange Emmett bonds for the Twin Falls bonds.

RE-DIRECT EXAMINATION BY MR. HAGA:

I have been in Emmett about four times and stayed two or three days each trip and got very little acquainted.

RE-CROSS EXAMINATION BY MR. WOOD:

I don't know whose bonds I purchased at either time.

I expected Colonel Hunter to buy the bonds in the open market or where he could get them if he found anyone who wanted to sell them at my figure.

Whereupon, counsel for plaintiffs offered in evidence Plaintiffs' Exhibit No. 3, being the judgment

roll in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, in the matter of the confirmation of the assessment of benefits of the Emmett Irrigation District, and the same was admitted in evidence over defendants' objection and thereupon leave to substitute a copy for the original was given. From said judgment roll it appeared that the said District, through its Board of Directors, had determined the benefits which would accrue to each tract or subdivision of land therein from the purchase and construction of the irrigation works and had apportioned the costs of such works over each tract and subdivision in accordance with the statutes in regard thereto, and that the action of such Board in apportioning such benefits and the costs of such works to the several tracts of land in said District was duly approved and confirmed by said Court on the 11th day of June, 1913, and no appeal was taken thereform and such decree has become final.

EDMOND SEYMOUR, being called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows, to-wit:

I am Edmond Seymour and reside in and a citizen of New York, State of New York, by occupation a banker and broker and am engaged in handling municipal and other bonds. I am chairman of the bondholders' protective committee of the defendant District and a member thereof. The other members are Adolph N. Gaebler, J. Paul Thompson, residing in Cleveland, Ohio, and a citizen of that state, and John

R. Morrow, residing in Pittsburg, Pennsylvania, and a citizen of that state. The New York Trust Company of New York City is the depositary for the bonds that the Committee looks after, or represents. This suit is brought with the consent of the Committee.

I know J. Overton Ramsey, whose deposition was read here. He is treasurer of the Lincoln University at Oxford, Pennsylvania. Lincoln University is a citizen of the State of Pennsylvania. I should say there are between 250 and 300 bondholders, as near as I can tell, widely scattered. My committee has a record of some, but not all, of the bondholders. The Trust Company has a record which is open for committee inspection. I am advised as to its contents when I ask for it. I have a list of the bonds deposited with the Trust Company. The Trust Company list would show to whom they issued the certificates of deposit for the bonds. I think the committee was organized in July, 1914. I know the attitude of the District toward the payment of the interest and bonds involved in this suit. It has injured the sale of the bonds very much and depreciated their value. The Directors stated to me their purpose to divide the interest fund up and pay it to the original tax payers who paid it in.

CROSS EXAMINATION BY MR. WOOD:

It was Mr. Shane who stated the purpose with reference to the fund, and the remark was made by him about a year ago in the Boise City National Bank

at Boise, in the presence of Mr. Baldwin of New York City, my attorney, Fremont Wood and Mr. Haga, Mr. Thompson and Mr. Little. You, Mr. Wood were representing the board of directors, as attorney, and all the board were present. I remember of you, Mr. Wood, making the statement to the board of directors that these taxes having been paid, there was no power in the district to return the funds to any of the land owners. This whole conversation was at a general meeting of the above named parties with a view to determining upon a compromise between the District and the bondholders. I could have obtained the names of the depositors of bonds with the Trust Company, but made no effort to secure the names.

My deposition was taken in this case in December, 1915, and the attorneys for the defendants called on me at that time for a list of the owners of bonds that were deposited. I refused to furnish it. I could not give it here and made no attempt to secure it. I am acting for the Committee. There was a bondholders' agreement entered into. This paper, defendants exhibit 1, is a copy of that agreement. Mr. Morrow became a member after the committee was formed.

Whereupon, Defendants' Exhibit 1 was offered and admitted in evidence:

Said exhibit being a bondholders' agreement for the deposit of bonds in question in this suit with a Bondholders' Committee, the same being dated October 24, 1914, by and between Edmond Seymour of New York, J. Paul Thompson of Cleveland, Ohio, A.

N. Gaebler of St. Louis and John R. Morrow of Pittsburg, Pa., as parties of the first part and all such holders of the issue of bonds in question in this action as should deposit their bonds under the terms of the agreement, and by which it was provided among other things that the Committee were appointed the agent of the depositors with authority to take any action necessary to protect the depositors' interests; that the holder of bonds should deposit the same with the New York Trust Company of New York, as depositary, to be held subject to the order of the Committee, upon which deposit the depositor should become a party and bound by the agreement, whether he signed it or not, that the bonds and coupons were by agreement assigned and transferred to the Committee, and the depositary should issue a transferable certificate of deposit therefor; that all certificates of deposit should be registered on books kept by the depositary and no transfer valid unless shown on the book. That all bonds and coupons should be subject to the order and control of the Committee, and upon the issuance of certificate of deposit by the depositary the Committee should become and was to be considered as the owner of the bonds deposited, in law and in equity for the purposes of the agreement and of all the rights, title and interest of the original depositors' therein; that the Committee should exercise all the rights of the depositors as holders of the coupons deposited thereunder and in its sole judgment and discretion take all steps deemed necessary by it to protect, guard,

secure and enforce the rights of the depositors in the name of the Committee, or in the name or on behalf of the depositors, or otherwise, and to that end to institute and carry on all such suits and proceedings in equity and law, or otherwise, as it may deem expedient or proper to protect the interests and enforce the rights of the depositors in every respect and to any extent.

That to defray expenses of the Committee, each depositor would, upon demand, pay promptly to the Committee his prorata share of the expense and liability, not exceeding one per cent of the face value of the bonds deposited by him.

The cross examination then continued as follows:

The repudiation of the District depreciated the bonds. The lawsuit and refusal of the District to levy any taxes depreciated them. The mere fact of the failure to pay interest and the mere fact that there was a contest would depreciate them.

The amount of bonds deposited with the New York Trust Company under the Committee agreement is $728,100. All the bonds held by plaintiffs in this suit are deposited with the Committee among the others.

The Bondholders' Committee assumed the expenses of this suit and it is being prosecuted by them in behalf of all the bondholders whose bonds have been deposited with the New York Trust Company under an agreement. I do not know the whereabouts of the bonds not deposited.

RE-DIRECT EXAMINATION BY MR. HAGA:

An effort was made to get all bondholders to come into the suit, and many objected, especially the banks, as they said it would injure their business, and many individuals objected. Those who are plaintiffs are those who consented. Neither Corkill or Corkill & Company or———Emmons have deposited bonds with the Committee.

Whereupon, Mr. Haga, for plaintiffs, tendered the bonds identified by Dr. Gaebler as being his bonds, for examination by counsel, and offered to produce any other bonds of plaintiffs in the case for similar examination, but further stated that he did not desire to leave the bonds or put them in as exhibits. He also offered in evidence, as plaintiffs' exhibit No. 4, the coupons in suit, being past due, and the same were admitted in evidence, with the understanding that they might be withdrawn for deposit with the depositary, the New York Trust Company, subject to the order of the Court in the future.

Whereupon plaintiffs rested.

Whereupon, the following proceedings were had:

MR. DRISCOLL: May it please the Court, at this time, and prior to entering upon the defense in this action, we wish to call the Court's attention to the fact that we have raised in the answer the question of the defect or want of necessary parties.

After referring to Equity Rule 43, counsel continued:

We desire at this time to move that either the bill

be dismissed, or that the other necessary and indispensable parties be brought in.

(After considerable discussion, the Court remarked as follows:

THE COURT: I think, gentlemen, that I shall deny the motion. I think I shall deny it for the present without prejudice to a renewal after hearing the evidence that may be adduced by the defendants. The situation is somewhat anomalous.

MR. WOOD: The Court, I suppose, means after hearing the evidence upon this question, or does Your Honor refer to the general evidence?

THE COURT: I mean the general evidence. I may say very frankly to counsel at the present time that I am not favorably impressed with the attitude of those who have bonds or control bonds, and apparently at least seek to withhold information as to who the owners or holders are from the Irrigation District. I say that is the apparent attitude. I am not sure that it is their real attitude, but it is difficult to avoid that impression. That, however, I will be able to control ultimately by declining to grant any relief unless the plaintiffs will take an equitable attitude toward the district.

MR. HAGA: May I suggest that in view of what the Court has said about the plaintiffs doing what they can to assist in giving the defendants the information that these witnesses may possess who have declined to testify, that so far as we are concerned, if the defendants desire that evidence, we are very glad to have it produced, and I am satisfied that the

chairman of the committee will have no objection whatever to having the New York Trust Company, which has the only record that we know of, of bondholders that have deposited their bonds, give that information, if we can get it out of the Trust Company without compelling them, as a witness—

THE COURT: I think I must have misunderstood the witness, or you did. Mr. Seymour, did you say that your committee had a list of the holders of these bonds, and their names, in New York?

A. Not a complete list. I have a partial list.

THE COURT: Why is it only partial?

A. Because I haven't had a list from the Trust Company for quite a long while.

THE COURT: You have had a list up to an aggregate of how many bonds?

A. I think I had a list up to about five hundred thousand. I had a list when they had that hearing in New York before; I think I had a list covering that period, up to that date.

The Court: You haven't that list with you?

A. No, sir.

Mr. Haga: I may suggest, Your Honor, that the bonds are not deposited with the committee.

The Court: I understand. But aren't you advised by the Trust Company of the bonds deposited with it?

A. I have been from time to time, but I haven't latterly, because I haven't asked for it. Sometimes I go over there and they say, "We have some bonds additional deposited."

On re-direct examination by Mr. Haga, Mr. Seymour testified as follows: I received a list from the Trust Company the other day since I arrived here of additional bonds deposited without giving the names of the depositors, but simply stating the amount of the bonds and the numbers and denominations. That is the way the information is usually given.

The Court then inquired of Mr. Seymour: How do these bonds get into the hands of the Trust Company? How do bondholders know that there is any such plan on foot as you have?

A. We advertised, and then we sent out circulars to everybody we ever heard of. Corkill furnished us a list of addresses, and the first circular gotten out, he mailed it out. He was very reluctant to give us the list—I don't know why—but he mailed them out, and as they began to come in I found out who they were. I had a great deal of correspondence, I had a large correspondence, I had letters almost every day from bondholders, inquiring about these, and in that way I learned something about it.

Mr. Haga: Your Honor understands that with a bond house, its capital in trade is a list of the customers that buy bonds, and that is the last thing they will give up. That is the good will they have to sell.

Mr. Wood: This witness has already testified that he has a list in New York of the names of at least the holders of five hundred thousand of these bonds, and that he could get the balance from the Trust Company, and that he hasn't got it because he hasn't called for it.

The Court: Now what steps do you suggest? If you want this information, what steps do you suggest that they take to get it for you. Counsel has indicated that they would be willing—

Mr. Driscoll: To bring in the additional parties, would be our answer to that.

The Court: Well, of course, I know that is what you want, but I am not sure that you will get that. Suppose it was half a loaf, what half do you want?

Mr. Wood: Of course, if they are not brought in as additional parties, if we could get the names and locations we might proceed in aid of our defense to take their depositions or make them parties ourselves.

The Court: If you want their names, I don't know but that I shall order that they be given you, but counsel can very well see the attitude I have taken in the matter, that is, I feel that if it be true, as seems to be the case, if the district is without information as to where these bonds are, by reason of the failure of its officers to keep proper records, it is only fair that the information be given, and I am inclined to think that plaintiffs possess this information, and if they decline to give it, it would be regarded as inequitable conduct on their part, which would make the court slow in granting equitable relief. Counsel suggests that in view of that, he would try to get this information for you, if you want it. I am rather disinclined to grant your motion if you can be protected in any other way, and so far as I now see, if you have the names of all

the present holders of bonds, it will protect you about as well as to bring them in, and there are grave difficulties in the way of bringing them in.

After further discussion between court and counsel, the court stated:

Before adjourning, though, Judge Wood, I suggest that if you want the names of the holders of these bonds you would better say so to counsel, and see what steps will be taken to get them for you.

Mr. Wood: I will consider that matter and present the matter tomorrow morning.

The said defendants, by their counsel, in support of the issues on their part, then read in evidence the following portion of the deposition of Edmund Seymour taken in New York City, Dec. 14, 1915.

Questions by Mr. Wood.

Q. Has your committee, Mr. Seymour, any record of the names of the depositors of these bonds and of the description of the bonds so deposited by them?

A. They have a record of the amounts deposited, and the names of the depositors; no other description.

Q. No description involving the denomination of these bonds?

A. No.

Q. Or their dates of maturity?

A. No.

Q. You have a record containing the names of the depositors and the amounts deposited?

A. I have it.

Q. Can you produce it, and will you produce it and furnish us with a list of the names of the depositors and the amounts so deposited.

A. I would prefer not to do that, for the reason that I would want to obtain the consent of the Trust Company and of the depositor; I would be perfectly willing to do it otherwise. I consider that I hold these in trust.

Mr. Wood: I think we will have to insist upon the production of this evidence in possession of the committee.

Mr. Haga: What evidence have you in mind?

Mr. Wood: I am referring to the list—

Mr. Haga: Of the depositors?

Mr. Wood: Of the depositors and the amounts deposited by each. What we would like to get is the denomination, that can't be given. If you had some other witness I would be willing to rely on that witness, but I do not want this witness to leave the stand without—

Mr. Haga: I understand you are making a demand for the record?

Mr. Wood: Yes, making a demand for the record.

Mr. Haga: We can take it up when we get back, because of the ruling of the court we will try and arrange some short cut way of getting the record, either by taking the deposition of some one connected with the depositary, or Mr. Seymour by interrogatories.

Mr. Hawley: Or by stipulation.

Mr. Wood: The only thing is, it may delay matters. When we get this information we may require some time. I do not want to be placed in a position hereafter that any steps we take on account of not getting the information here to subject ourselves to delay hereafter.

Mr. Haga: No. As the case now stands we view it as entirely immaterial, but by a change, by adding additional parties or by the committee coming into the case, if we elect to do that, it may become more or less important.

Q. And for that reason you decline to produce the lists, or furnish us the evidence as to the names of these depositors and the amount of bonds owned by them?

A. That is the reason.

HARRY S. WORTHMAN, a witness previously sworn and examined in behalf of the plaintiff, was called in behalf of the defendants, and testified as follows:

I have resided at Emmett 11 years, in the Emmett Irrigation District, and was secretary from the time of organization to January 2, 1912.

Construction began on the canal system now owned by the defendant district in 1904 or 1905. It was constructed by a company known as the Canyon Canal Company, which was a Carey Act construction company under the Carey Act. The lands were lands of the United Stotes segregated under the Carey Act. The construction was done under contract with the State of Idaho. Water rights were

sold to land owners under the canal, by the Canyon Canal Company, which was the construction company. They had to have a water right before they could file on the Carey Act land. There were quite a large amount of State School lands in the District, between six and seven thousand acres. Contracts for water rights were also made with the holders of these lands. At that time there were about eighteen or nineteen thousand acres in all, State, private and Carey Act lands in the entire selection. And about four thousand acres were added after the construction began, under what was known as the South Side Extension. When the canal was in operation by the Canyon Canal Company, the acreage of water rights sold was in all about 22,000 acres.

Whereupon, counsel for defendants asked said witness to state if he knew the capacity of said canal in comparison with the total volume of waters sold by the Canyon Canal Company. To which counsel for plaintiff objected, as irrelevant and immaterial and not the best evidence. Which said objection was sustained. To which ruling counsel for defendants then and there excepted, which said exception was allowed.

Counsel for defendants then asked said witness to state what he knew about the service involving the delivery of water of the Canyon Canal Company to the users of water under the canal prior to the time of taking over the property by the holding company. Which was objected to by counsel for plaintiffs, on the same grounds as the preceding question.

Counsel for defendant stated the purpose of the question was to show perhaps not a total failure, but nearly a total failure of ability by the Canyon Canal Company to furnish water to the land owners under the canal, under said water contracts. To which counsel for plaintiffs made the same objection. Both of which said objections were sustained. To which said ruling counsel for defendants thereupon excepted, which said exception was by the court allowed.

I signed the bonds as Secretary, beginning about the middle of December, and ending before the 2nd day of January, 1912. Mr. Bell signed as president, beginning about the same time and concluding about four of five days to a week afterwards.

Mr. Shane succeeded Mr. Bell as director. R. B. Wilson succeeded him as President. Whereupon the following portion of the minutes of the board of directors of the Emmett Irrigation District under date of December 2nd, 1911, was read in evidence:

"Special meeting of the board of directors of the Emmett Irrigation District, held at the office of the District at Emmett, Idaho, on the 22nd day of December, 1911, at three o'clock P. M. of said day. Present. R. B. Wilson, W. H. Shane and C. L. Spaulding."

"Moved and seconded that R. B. Wilson act as temporary president."

V. T. CRAIG, called as a witness in behalf of defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD

I am V. T. Craig, reside at Emmett, Idaho, and am and have been cashier of the Bank of Emmett for the last ten years.

I have made a computation of the amount of bonds maturing at sixteen years and those at twenty years, as shown by the statement on the bond, plaintiffs' Exhibit 2. Plaintiffs' Exhibit 2 states as to the maturity of the sixteen year bonds, "110,000 $110,000 in amount, being bonds numbered from M43 to M57 inclusive, and from D657 to D826 inclusive, on January 1, 1927." The total amount, according to this statement, maturing in sixteen years, is $100,000, instead of $110,000, as stated in the bond.

As to the bonds maturing in twenty years, Plaintiffs' Exhibit 2, states as follows:

$176,000 in amount, being bonds numbered from M193 to M262 inclusive, and from D1415 to D1646 inclusive, on January 1, 1931." According to this statement the total bonds maturing at the end of twenty year period, on January 1, 1931, is $186,000, or ten thousand dollars more than stated in the bonds.

CROSS EXAMINATION BY MR. HAGA

In the sixteen year bonds there should have been ten thousand dollars more of bonds. The bonds specified by number as maturing at the sixteen year period are ten thousand short of what the bond recites as the amount. In other words, going by the number or description of the bonds, there are only $100,000 of bonds maturing in that year, when

there should be $110,000 then, and in the twenty year bonds, there should be $176,000 actually maturing, according to the description or numbers of the bonds, and $186,000 purport to mature at that time.

I have not examined the bonds themselves to determine whether one hundred and ten thousand are made to mature in the sixteenth year or only one hundred thousand, nor whether one hundred eighty-six thousand of them mature in the twentieth year or only one hundred seventy-six thousand. So I do not know how many bonds actually mature in the sixteenth year or in the twentieth year.

RE-DIRECT EXAMINATION BY MR. WOOD

I had these bonds in my possession in the bank, both before and after they were signed by the officers. They were signed by Mr. Bell, as President, between the 15th day of December and some time after the 1st of January, 1912. Two or three days afterwards, I think. I don't know how many were signed after the 1st of January. All were signed in our bank room. They had been signed by the Secretary before the president signed them.

W. S. SHANE, a witness previously sworn and examined in behalf of plaintiffs, was recalled as a witness in behalf of the defendants, and testified as follows:

DIRECT EXAMINATION BY MR. WOOD

I began to act as director of the district December 22, 1911, and continued to act from that time.

Mr. Bell finished signing the bonds as president on the 3d or 4th of January.

I know Dr. A. N. Gaebler, one of the plaintiffs. Met him in July or August, 1912, at the Bank of Emmett, in Emmett, Idaho, and there had a conversation with him with reference to the purchase of the bonds of the District. At that time Colonel Hunter came to me and said Dr. Gaebler was in town with him and expected to take $20,000 in district bonds. He took me down and introduced me to Mr. Gaebler, and I told him that I understood he was figuring on buying some bonds. He said he was. I asked him to be careful about the bonds he took. That Mr. Corkill had bonds that we questioned very much, that he called his own, and if he took the bonds from Mr. Corkill we would not get any money for them, but if he took the bonds out of the depositary the money would come to the District. I was talking to Dr. and Mr. Hunter together. The doctor said he would leave that to Mr. Hunter. Mr. Hunter said he would take care of that. But there was no money came. Subsequent to the conversation in the bank, I went with them out to the automobile standing across the street and said, now whatever you do don't let Doctor here take any bonds except the bonds out of the depositary, and the Doctor said "I will leave that all with the Colonel," and the Colonel said, "I will see that he does not." This was before the first purchase of bonds by Dr. Gaebler. It was in July or August during that summer, 1912.

RE-CROSS EXAMINATION BY MR. HAGA

I remember on last Monday Mr. Seymour introduced Dr. Gaebler to me in this room. I did not say in substance or effect I had not met the Doctor before. I simply shook hands with him. I was satisfied he had forgotten me. I knew him when I saw him.

HARRY S. WORTHMAN, a witness heretofore examined in behalf of defendants, was again recalled in behalf of defendants and testified as follows:

The Emmett Irrigation District took possession of the canal system formerly owned by the Canyon Canal Company August 15, 1911, and has operated it since that time. This paper, defendants' Exhibit No. 2, was in my possession on that day as a director and secretary of the Emmett Bench Canal Company and also as secretary of the Emmett Irrigation District. This paper, defendants' Exhibit No. 3 for identification, I first saw before it was executed, probably three or four days prior to the 15th day of August, 1911, and, as secretary of the Emmett Irrigation District, have had it in my possession. The canal property is described in both, defendants' Exhibit No. 2 and No. 3, is the same property originally constructed by the Canyon Canal under the contract with the State of Idaho and now operated by the Emmett Irrigation District.

The District went into possession of the property under the instrument marked Defendants' No. 3. Said defendants' Exhibits No. 2 and No. 3 for iden-

tification were then offered and admitted in evidence.

Exhibit No. 2 was a quit claim deed, made, executed and delivered by the Canyon Canal Company, Limited, to the Emmett Bench Canal Company, as grantee, under date of August 15th, 1911, conveying from the said Canyon Canal Company to said Emmett Bench Canal Company all right, title and interest in and to the irrigation system, rights of way, water rights and irrigation structures situated in Boise and Canyon counties, Idaho, and constructed by the Canyon Canal Company under contract with the State of Idaho, and now owned and operated by the Emmett Irrigation District, all of which property was particularly and at length described in said deed.

Said deed further provided: "It is understood, however, that the said property, lands, water rights and irrigation structures are transferred to the party of the second part, subject to all legal charges, liens and claims against the same."

Said Exhibit 3 is a quitclaim deed, also dated August 15, 1911, made, executed and delivered by the Emmett Bench Canal Company to the Emmett Irrigation District as grantee. After conveying the same property described in Exhibit No. 2 to the said Emmett Irrigation District it provided as follows: "It is understood, however, that the said property, lands, water rights and irrigation structures are transferred to the party of the second part, subject to all legal charges, liens and claims against the same."

CROSS-EXAMINATION BY MR. HAGA

The Emmett Bench Canal Company, during the time it was in possession of the system paid some claims created by the Canyon Canal Company. I don't know, but I don't think they were the charges, liens and claims against the property referred to in Defendant's Exhibit No. 2.

H. HAYLOR, a witness previously sworn and examined in behalf of plaintiffs, was then called and testified in behalf of defendants as follows:

DIRECT EXAMINATION BY MR. WOOD

I took possession of the office of Secretary of the defendant District January 2, 1912. The bonds were delivered after that and payment of money made. I have never kept or secured any record of the bonds as to whom they were sold and the amounts or denominations, because I could not get them. I wrote to the depositary. I understood the law required such record and wrote the depositary soon after the bonds were sold, but have never got the records. Neither the District, nor myself, as secretary, has any information as to who the owners or holders of the bonds are, aside from the plaintiffs in this suit.

CROSS-EXAMINATION BY MR. HAGA

I have been told of some other bondholders. Mr. John R. Morrow, of Pittsburgh, had bonds. Have had letters from a lady in Leavenworth, Kansas, in regard to the bonds, and have also understood that Mr. Reed and Mr. Craig, who has testified in this case, hold bonds.

DIRECT EXAMINATION BY MR. WOOD

I have been treasurer of the defendant district since February, 1913. I never have had any record of the ownership and place of residence of the bondholders holding the bonds of the District in this acaction, nor was such record turned over to me by my predecessor.

W. H. SHANE, a witness previously sworn and examined in behalf of plaintiffs and defendants, was recalled and testified in behalf of defendants, as follows:

DIRECT EXAMINATION BY MR. WOOD

I attempted to secure a record of the sale of the District Bonds just before we made the transfer of new bonds for old bonds at the Fort Dearborn Trust and Savings Bank. They had in their possession then eight hundred thousand dollars worth of bonds and there were still three hundred thousand dollars worth not delivered, and I insisted before I delivered those other three hundred thousand dollars worth that I have the numbers of all the old bondholders and the numbers of Corkill's bonds. All that was turned over, except what the Trustee had, and I held the proposition up for something like three days before I would deliver the additional bonds, but I could not get them, they absolutely refused to let me have them. Corkill refused, and Mr. Glenny, the trust officer, said "I cannot give it to you without the consent of Mr. Corkill," and I could not get the consent of Mr. Corkill. Corkill said it was none of my business, that it did not

make any difference to me where those bonds were. I was in Chicago at the time.

Whereupon, Defendants rested.

REBUTTAL

EDMOND SEYMOUR, a witness previously sworn and examined, called in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. HAGA

I know Mr. Shane. I introduced Dr. Gaebler and Mr. Shane Monday morning. Mr. Shane said at the time that he had never met Dr. Gaebler before.

H. HAYLOR, previously sworn and examined, was called on rebuttal by the plaintiffs, and testified as follows:

Mr. Shane, as president, and myself, as secretary, signed the instrument, Plaintiff's Exhibit 5. Whereupon the same was offered and admitted in evidence, the following being a full, true and correct copy thereof.

STATEMENT OF THE FINANCIAL CONDITION OF THE EMMETT MUNICIPAL IRRIGATION DISTRICT AT THE CLOSE OF BUSINESS ON THE FIRST DAY OF FEBRUARY, 1913, AS DETERMINED BY THE BOARD OF DIRECTORS.

ASSETS

Main canal	$ 500,000
Bench canal	140,000
Slope canal	100,000

Laterals	110,000	
Headgate and dam	80,000	
Syphon	10,000	
Right-of-way	12,000	
Decree of water—438 second feet or 21,900 miners' inches at $40	876,000	
Office fixtures, tools, wagons, horses and equipment	30,000	
Accts. receivable	none	
Bonds in treasury	222,400	
Due on 1912 assessment	60,000	
Cash on hand in district	6,807	
		$2,147,207

LIABILITIES

Bonds outstanding	$ 877,600	
Bills payable	none	
Warrants outstanding	161,802	
Interest on warrants (estimated)	3,000	
Accounts payable	26,328	
Total net assets	1,078,477	
		$2,147,207

I hereby certify that the foregoing is a full and true statement of the financial conditions of the Emmett Municipal Irrigation District on February 1st, 1913, as the same appears from the records of the Emmett Municipal Irrigation District Office.

H. HAYLOR, Secretary.

Attest:

W. H. SHANE, President.

Subscribed and sworn to before me this 16th day of May, 1913.

(Seal) V. T. CRAIG,

Notary Public, in and for Canyon County, State of Idaho.

After calling Mr. Haylor's attention to the fact that the contract of September 12, 1911, provided that the District should furnish waivers from the land owners of errors and irregularities in the issuance of the bonds, he was asked if any waivers were furnished and testified as follows:

Waivers were furnished. I didn't have anything to do with their procuring, but when they came in I mailed them to Chicago. I saw some of them. They were printed.

Whereupon, the witness was shown a printed form marked "Waiver of Errors," and he stated as follows:

I should judge that was the same waiver of errors, or a copy of the waiver of errors; as far as I can see it is identical with the form that was used.

Whereupon, counsel for plaintiffs asked to have the printed form marked "Plaintiffs' Exhibit "6" and offered it in evidence, to which offer counsel for defendants objected on the ground that said instrument was incompetent, irrelevant and immaterial and not proper rebuttal, which objection was overruled and their exception allowed.

Said Waiver of Errors, after reciting the organization of the Emmett Irrigation District, leaving a blank for a description of the lands owned by the

parties signing the same, also recited the issuance of $1,100,000.00 of the bonds of the Emmett Irrigation District, dated January 1, 1911, that a contract had been duly authorized and executed by authority of the Board of Directors whereby a portion of said bonds were to be delivered in payment of the purchase price of the irrigation works of the District and a portion were to be sold at par to furnish funds for improving such works, that said contract was subject to the condition that the legality of the said bonds should be approved by certain legal counsel, and it was necessary that an instrument in the form of such waiver be signed and executed by the land owners in the District and that the organization of the District, the issuance of the bonds and the performance of the contract were all to the advantage of the party signing the waiver as owner of the land described therein, and provided as follows: "In consideration of the premises, and in consideration of the acceptance of the said bonds under the contract aforesaid by the parties entitled thereto under the said contract, the undersigned, as owner of the said above described land, does hereby for himself, his heirs and assigns, waive all errors, omissions or irregularities in and about the proceedings for the organization of the said District and the issuance of the said bonds, and does hereby acknowledge and declare that all of the conditions and things required by law in and about the organization of the said District and in and about the authorization and execution of the said bonds and the sale and de-

livery thereof have been done, have happened and have been performed, and that the above described lands are and forever shall be subject to the levy of a tax for the payment of the principal and interest of the said bonds according to the tenor and effect thereof, and the provisions and the true intent and meaning of the said Act."

Mr. Haylor further testified that the original waivers were not in his possession.

W. H. Shane, a witness previously sworn and examined, upon being recalled in rebuttal testified as follows:

I had something to do with obtaining the waivers that were furnished in connection with the sale of the bonds to Corkill & Company. We did not furnish waivers from all the land owners. I know they wanted the waivers and we got them as quick as we could and sent in a certain per cent of waivers, something like 90 per cent., between 80 and 90 per cent. of the land owners.

To all of which testimony regarding waivers counsel for defendants objected on the ground that such evidence was irrelevant, incompetent and immaterial and not proper rebuttal, which objections were overruled and defendant's exceptions thereto allowed.

MR. HAYLOR, being recalled, then read in evidence the minutes of the meeting of the board of directors of May 23, 1912. Whereby it appeared that a special election was called to be held on June 22, 1912, in said District, to authorize the Board to make a levy to pay the interest to become due on the bonds

on July 1st, 1912, and directing notice thereof to be given, said interest aggregating the sum of $33,000.

The minutes of the Directors' meeting of June 27, 1912, were then read, from which it appeared that the board canvassed the vote cast at the special election mentioned in the foregoing minutes and found 107 votes in favor of said assessment and 49 against, and that the board declared the assessment carried.

The minutes of directors' meeting of June 29, 1912, whereby it appeared that the board directed the president and secretary to draw warrants on the interest fund for the following amounts:

No. 101, $5000.
No. 102, $5000.
No. 103, $5000.
No. 104, $5000.
No. 105, $4783.

to pay interest on coupons on bonds July 1st, 1912.

The minutes of the meeting of the board of directors of June 20, 1913, were then read. Whereby it appeared that the Secretary was directed to transfer the sum of $26,215.08, turned over to the District by the Cantinental and Commercial Trust and Savings Bank of Chicago, which had been used by the District as a part of the construction account from the construction fund to the bond and interest fund, where the same properly belonged.

Further, a resolution was adopted at said meeting rciting that $52,000 belonging to the District had been used by the District in making permanent improvements and in construction, and that there

would be outstanding on July 1st, 1913 the sum of $79,173.81 interest on outstanding bonds with but $27,540.27 in the interest fund, and that the District contracts with Corkill & Company was conditioned on the payment of the semi-annual interest due July 1st, 1913. And it was ordered that the board do pay the interest from available funds, without a tax levy and ordering $52,000.00 expended for construction, as aforesaid, to be charged to construction account and credited to the bond and interest account and used for the payment of interest, and directing issuance of warrants on the interest fund to the Fort Dearborn Trust and Savings Bank of Chicago in payment of said interest.

The witness continued. The warrants which the board of directors ordered in the foregoing minutes were drawn by me and delivered to Corkill & Company or the Fort Dearborn Trust & Savings Bank.

CROSS-EXAMINATION BY MR. WOOD

No levy was ever made of any tax that was authorized by what purports to be special assessment called in June, mentioned in direct examination, nor any tax ever collected under it. The only assessment ever made for the payment of interest on these bonds was in the fall of 1913, and it produced the fund now in the hands of the Treasurer.

The July interest mentioned in direct examination was produced by the method shown in the foregoing minutes, namely, transfer from other funds.

Whereupon, counsel for defendants having prior to entering upon the defense in the action, moved

the court that either the bill be dismissed or that the other bondholders of the bonds of said district, being necessary and indispensable parties be brought in as parties to the action, in accordance with the terms set forth in defendant's answer, which motion was at the time denied, without prejudice to renewal after hearing defendants' evidence, renewed said motion and the same was taken under advisement by the court, and decided by the decree thereafter entered in the cause.

Thereafter counsel for plaintiff stated that letters had been written to various bondholders other than plaintiffs, requesting them to come in as parties plaintiff, and there were received in evidence and read the following replies thereto.

Letter dated June 3, 1916, from E. O. Pequiequet, saying he was willing to intervene, provided a majority of the bondholders did likewise, and the committee paid all costs.

A letter dated June 17, 1916, from the People's Savings Bank of Saginaw, Michigan, wanted to know if it would make any difference to them whether they consented.

Letter dated June 17, 1916, from First National Bank of Scenery Hill, Pa., saying they could not see their way clear to be made a party as there were a number of large bondholders whom they thought should take the lead.

Letter dated May 27, 1916, from the Adrian, Michigan, State Savings Bank saying they would rather lose than to have it known that they owned the bonds.

Letter dated July 28, 1916, from First National Bank, Highland, Illinois, consenting, and Maria H. Chaffee, dated July 8, 1916, consenting.

Letter from Charles P. Poole, dated July 26, 1916, stating how he obtained the bonds, but neither consenting or declining to come in.

Letter dated June 13, 1916, from Northern Trust Company stating that they were administrators of the estate of William L. Grey, deceased, whose estate or heirs had $10,000.00 of Emmett bonds, but that the Trust Company was unable to furnish any information regarding same.

Letter from Andrews and Ellis, dated May 29, 1916, regarding bonds of Grant M. West and asking for further information about the suit.

It was admitted by counsel for plaintiffs that the plaintiffs J. Paul Thompson and Henry M. Williams had filed no answers or response to the interrogatories submitted to them by defendants under Equity Rule 58.

Whereupon, both plaintiffs and defendants rested and the cause was argued and taken under advisement.

After the submission of said cause and prior to the entry of decree herein, it was stipulated by and between the parties hereto, through their respective attorneys, that the deposition of E. C. Glenny taken in this cause might be corrected as to the description of the bonds now held in escrow by the Fort Dearborn Trust and Savings Bank in accordance with affidavits filed in this cause, it being expressly

understood that defendants did not thereby admit the correctness of said deposition as it originally stood or as corrected, either as to the description of the bonds or the number or amount of the same. The corrections referred to in said stipulation and shown by said affidavit were as follows:

Bonds No. D871-986 were substituted for bonds No. D871-896, the par value of said block of bonds being correctly stated in said deposition.

The following bonds were added:

Nos. C76, 80, 116, 117, 118, at $100.00, $500.00.

No. D658 at $500.00, $500.00.

The following bonds and amounts were stricken:

No. M17 at $1000.00, $1000.00.

Nos. D136 and 1067 at $500.00, $1000.00.

Respectfully submitted as statement of the evidence to be included in the record of said cause on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in accordance with the rules of practice for courts of equity of the United States.

J. M. THOMPSON,
FREMONT WOOD,
DEAN DRISCOLL,

Solicitors for each and all defendants above named.

Service of the within and foregoing statement, by receipt of copy thereof, this 22nd day of September, 1917, is hereby admitted.

RICHARD & HAGA,
McKEEN F. MORROW,

Solicitors for each and all the Plaintiffs above named.

Notice of presentation for allowance of the within and foregoing statement of evidence having been given for October 3d, 1917, at which time the Judge of the above entitled court was absent, the same was presented at this time, by mutual consent of counsel for all parties, for approval, together with the amendments prepared by the appellees, and it appearing to me that said statement and said proposed amendments were lodged in due time with the Clerk of this court and that all said proposed amendments are correct and have been engrossed on said original statement by agreement of counsel, and that the same is now a true and complete statement of the evidence had on the trial of said cause, and that the same is properly prepared;

It is hereby ordered and certified, counsel for all parties being present and consenting thereto, that the same is in all respects a full, true and complete and properly prepared statement of the evidence and proceedings had at the trial of said cause, and the same is hereby settled, allowed and approved as such.

Dated October 6th, 1917.

FRANK S. DIETRICH,
Judge.

Lodged Sept. 22, 1917.

Endorsed: Filed October 8, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 479.

PETITION FOR APPEAL

Now comes each and all the defendants above named and feeling themselves agrieved by the decree made and entered in this cause on the 16th day of July, A. D. 1917, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they and each of them pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting in the City of San Francisco in the State of California.

And your petitioners further pray that the proper order touching the security to be required of them and each of them to perfect said appeal be made; and, further, that an order be made suspending, during the pendency of said appeal, on such terms as to bond or otherwise as may be considered proper, that portion of said decree providing that the said defendants, so far as the matter comes within their official duties, apply the money now in the bond fund of said district or that may hereafter be paid into said bond fund under the tax levied on the 22nd day of October, 1913, to the payment of interest cou-

pons attached or belonging to bonds outstanding, mentioned in said decree.

J. M. THOMPSON,
FREMONT WOOD,
DEAN DRISCOLL,

Solicitors for each and all the Defendants above named.

ORDER ALLOWING APPEAL AND SUSPENDING A PORTION OF DECREE DURING THE PENDENCY OF APPEAL

AND NOW, to-wit, on the 22nd day of September, A. D. 1917, it is ordered that the petition be granted and the appeal allowed; and it is further ordered that that portion of the said decree filed and entered in the said cause on July 16th, 1917, providing that the defendants, so far as the matter comes within their official duties, apply the money now in the bond fund of said district or that may hereafter be paid into said bond fund, under the tax levied on the 22nd day of October, 1913, in payment of interest coupons attached or belonging to the bonds outstanding, mentioned in said decree, be suspended during the pendency of said appeal, all on the condition that said defendants file bond in the sum of FIVE THOUSAND ($5000) DOLLARS with sufficient sureties to be approved by this Court, and conditioned that the said defendants and appellants shall prosecute said appeal to effect and answer all costs if they or any of them fail to make their plea good; and further, and in addition there-

to, if they or any of them fail to make their plea good, answer all damages, costs and charges arising by reason of said suspension during the pendency of said appeal of the portion of said decree hereinbefore referred to.

FRANK S. DIETRICH,
District Judge.

Service of the foregoing petition, by receipt of copy thereof, this 22nd day of September, 1917, is hereby admitted.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for each and all the Plaintiffs above named.

Endorsed: Filed September 22, 1917.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)
In Equity 479.

ASSIGNMENT OF ERRORS

COME NOW the defendants above named, by J. M. Thompson, Fremont Wood and Dean Driscoll, their solicitors of record, and having filed herewith their petition for the allowance of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain decree filed and entered in the above entitled cause in the above entitled court on the 16th day of July, 1917, and say that said decree is erroneous and unjust to the said defendants and each of them and that, in the records and proceedings of said cause there is manifest error in the following particulars, to-wit:

I.

Because the Court erred in holding and decreeing that the bonds of defendant district alleged to be owned and held by the plaintiffs, J. Paul Thompson and Henry M. Williams, are legal, valid obligations of defendant district, for the reasons that:

(a) Neither of said plaintiffs, J. Paul Thompson or Henry M. Williams, at any time filed any answer whatsover to interrogatories for discovery filed by defendants in said court and cause, on the 17th day of August, 1916, for discovery by said plaintiffs, in accordance with the 58th Rule of Practice for courts of equity of the United States, promulgated by the Supreme Court of the United States November 4, 1912.

(b) In that no evidence whatever was introduced at the trial of said cause, nor admissions made at said trial, or in the pleadings of said cause, or elsewhere, in support of the allegations of plaintiffs' complaint as amended, so far as the same refers to said plaintiffs, Thompson and Williams, or showing said plaintiffs entitled to any relief, or supporting said decree or any part thereof, in any manner, so far as the same affects the said plaintiffs J. Paul Thompson and Henry M. Williams.

II.

Because the Court erred in holding and decreeing that the said defendants and each of them and their successors in office be enjoined and restrained from diverting or otherwise applying or using the moneys collected for or hereafter paid into the bond

fund, created or required by law to be created, to purposes other than the payment of principal and interest on the bonds of the said plaintiffs, Thompson and Williams among others, for the reasons set forth in subdivisions (a) and (b) of the first assignment of error herein.

III.

Because the Court erred in holding and decreeing that said defendants be ordered and directed, so far as the matter comes within their official duties, to apply the money now in said bond fund, or that may hereafter be paid into said fund, under the tax levy of the 22nd day of October, 1913, to the payment of any of the coupons originally attached or belonging to the bonds of the said plaintiffs, Thompson and Williams, for the reasons set forth in subdivisions (a) and (b of the first assignment of error herein.

IV.

Because the Court erred in decreeing to the said plaintiffs, J. Paul Thompson and Henry M. Williams, any relief whatsoever, for the reasons set forth in subdivisions (a) and (b) of the first assignment of error herein.

V.

Because the Court erred at the trial of said cause in overruling said defendants' motion to dismiss said action as to the plaintiffs J. Paul Thompson and Henry M. Williams, for the reasons set forth in subdivisions (a) and (b) of the first assignment of error herein.

VI.

Because the Court erred in overruling and denying defendants' motion, at the trial of said cause, that all of the holders of outstanding bonds of said defendant district be brought in as parties to this action.

VII.

Because the Court erred in proceeding with the trial, and the hearing of said cause and the entering of said or any decree in said cause in favor of said plaintiffs or any of them, or any other bondholders similarly situated, in that the plaintiffs' bill as amended is defective for want of and by reason of non-joinder of parties, to-wit, holders of other outstanding bonds of series one and issue one of said defendant district.

VIII.

Because the Court erred in holding and decreeing that bonds of defendant district alleged to be held and owned by persons other than plaintiffs to this action are legal and valid obligations of said district, for the reason that such holders are not parties to the action.

IX.

Because the Court erred in holding and decreeing that the defendants be perpetually restrained and enjoined from diverting or otherwise appropriating, applying or using for any purposes other than the payment of principal and interest as the same become due, on said bonds or coupons, the money collected for or hereafter paid into the bond fund, cre-

ated, or required by law to be created for the payment of the principal and interest on said bonds, so far as the same affects bonds held by persons other than the plaintiffs in this action, for the reason that such holders are not parties to the action.

X.

Because the Court erred in holding and decreeing that the said defendants and each of them be ordered and directed, so far as the matter comes within their official duties, to apply the money now in said bond fund or that may hereafter be paid into the bond fund, under the tax levied on the 22nd day of October, 1913, to the payment of any interest coupons, originally attached or belonging to the bonds outstanding and held by persons other than the plaintiffs in said action, for the reason that said holders are not parties to the action.

XI.

Because the Court erred in making or entering any decree with respect to bonds or coupons owned or held by persons other than the plaintiffs in the action, for the reason that said owners or holders are not parties to this action.

XII.

Because the Court erred in entering any decree, granting any relief to the plaintiffs or to any holder of bonds of said district similarly situated, or otherwise, in that none of the bonds in controversy in the cause were introduced in evidence upon the trial of said cause.

XIII.

Because the Court erred in holding and decreeing that any bonds of said district outstanding were valid and legal obligations of said district, in that no bonds of said district were introduced in evidence at the trial of said cause.

XIV.

Because the Court erred in holding and decreeing that bonds delivered to Corkill & Company under subdivision (c) of paragraph five, on page seven of the original contract of September 12, 1911, copy of which was introduced in evidence and attached to defendants' answer as Exhibit "A" thereof, said subdivision reading as follows:

"Upon the execution in favor of the District of the above transfers and assignments mentioned above in Section 2 hereof, and upon the deposit of said papers with the depositary, the parties of the second part shall be entitled to receive $220,000 par value in amount of the said bonds with the January 1st, 1912, and all subsequent coupons attached thereto, but the said $220,000 par value in amount of bonds shall be held by the depositary as security for the compliance of the parties of the second part with the terms of this contract and delivered to them as hereinafter set forth."

are valid and legal obligations of said district, for the reason that the same were issued to said Corkill & Company as commission for services, and not for cash or canals or works or for any other consideration authorized by law.

XV.

Because the Court erred in holding and decreeing that the defendants, and each of them, and their successors in office, be restrained and enjoined from diverting or using money collected for or hereafter paid into the bond fund created, or required by law to be created for the payment of principal and interest on said bonds, to purposes other than the payment of principal and interest on the outstanding bonds of said district mentioned in said decree, including bonds and coupons delivered to Corkill & Company under subdivision (c) of paragraph five of the contract of September 12, 1911, attached to defendants' answer as Exhibit "A" thereof; said subdivision (c) of said paragraph reading as set forth in the last preceding assignment of error, for the reason that the said bonds and coupons delivered to Corkill & Company under said paragraph were issued to them as commission for services, and not for cash, or canals, or works, or any other consideration authorized by law.

XVI.

Because the Court erred in holding and decreeing that said defendants and each of them be ordered and directed, so far as the matter comes within their official duties, to apply money now in said bond fund, or that may hereafter be paid into said bond fund, under the tax levy of the 22nd day of October, 1913, to the payment of any of the coupons belonging or attached to bonds delivered to Corkill & Company, under subdivision (c) of para-

graph five of the contract of September 12, 1911, attached to defendants' answer as Exhibit "A" thereof, copy of which is set forth on assignment of error Number XIV herein, for the reason that said bonds and coupons were issued to said Corkill & Company as commission for services, and not for cash, or canals, or works, or any other consideration authorized by law.

XVII.

Because the Court erred in holding and decreeing any relief in favor of the holders of bonds and coupons delivered to Corkill & Company, under subdivision (c) of paragraph five of the contract of September 12, 1911, attached to defendants' answer as Exhibit "A" thereof, copy of which subdivision of said paragraph five is set forth in the XIV assignment of error herein, for the reason that the same were issued to said Corkill & Company for services rendered and not for cash, or canals or works, or for any other consideration authorized by law.

XVIII.

Because the Court erred in holding and decreeing that any outstanding bonds of the district are valid and legal obligations of the said district, for the reasons that:

(a) Said bonds, other than those sold and delivered for cash, were not issued for canals, for works or cash at par, or for any other consideration authorized by law.

(b) Said bonds were not signed by the Presi-

dent or Secretary of the defendant district in office at the time the same were issued or delivered.

(c) Said bonds do not mature at the periods or intervals prescribed by law.

(d) No portion of said bonds, except those sold and delivered to Corkill & Company for cash, were issued and sold at par and accrued interest.

(e) Because the plaintiffs and each of them refuse to do equity, by furnishing to the defendants the names of the holders and owners of said bonds and the numbers and denominations held by each.

(f) None of the holders of bonds or coupons outstanding, other than the actual plaintiffs, were shown to be bona fide holders of the same.

XIX.

Because the Court erred in holding and decreeing that the defendants and each of them and their successors in office be perpetually enjoined and restrained from diverting or otherwise appropriating, applying or using for any purpose other than for the payment of principal or interest as the same becomes due according to the tenor of said bonds, money collected for or hereafter paid into the bond fund created or required by law to be created for the payment of principal and interest on said bonds, for the reasons set forth in subdivisions (a), (b), (c), (d), (e), and (f) of the XVIII. assignment of error herein.

XX.

Because the Court erred in holding and decreeing that said defendants and each of them, so far as

the matter comes within their official duties, apply the money now in said bond fund, or that may hereafter be paid into said bond fund under the tax levied on the 22nd day of October, 1913, to the payment of any of the outstanding interest coupons belonging to or attached to the outstanding bonds of said district, for the reasons set forth in subdivisions (a), (b), (c), (d), (e) and (f) of the XVIII assignment of error herein.

XXI.

Because the Court erred in holding and decreeing any relief to the plaintiffs or any of them, or any person similarly situated, for the reasons set forth in subdivision (a), (b), (c), (d), (e), and (f) of the XVIII. assignment of error herein.

XXII.

Because the Court erred in sustaining plaintiffs' objections, that the matter was irrevelant, immaterial and not the best evidence, to the question asked by counsel for defendants of the witness Harry S. Worthman, which was that the said witness state, if he knew, the capacity of said canal in comparison with the total volume of water sold by the Canyon Canal Company, to which ruling counsel for defendants then and there excepted, which said exception was by the Court allowed.

XXIII.

Because the Court erred in sustaining the objection made by counsel for plaintiffs, that the same was irrelevant, immaterial and not the best evi-

dence to the question asked by counsel for defendants of the witness Harry S. Worthman, requesting said witness to state what he knew about the service involving the delivery of water of the Canyon Canal Company to the users of water under the canal prior to the time of taking over the property by the holding company, to which said ruling counsel for defendants then and there excepted, which said exception was by the court allowed.

XXIV.

Because the Court erred in sustaining plaintiffs' objection, on the ground that the same was irrelevant, immaterial and not the best evidence to the defendants' offer to prove by the witness Harry S. Worthman that there had been a total failure by the Canyon Canal Company to furnish water to the land owners under the canal, under said water contracts, to which said ruling counsel for the defendants then and there excepted, which exception was by the court allowed.

WHEREFORE, the defendants and each of them pray that the said decree be reversed and the said District Court directed to dismiss said bill and to render such decree as shall be meet and just.

J. M. THOMPSON,
FREMONT WOOD,
DEAN DRISCOLL,

Solicitors for each and all the Defendants and Appellants above named.

Service of the within and foregoing assignment

of errors, by receipt of copy thereof this 22nd day of September, 1917, is hereby acknowledged.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for each and all the Plaintiffs and Respondents above named.

Endorsed: Filed September 22, 1917.
W. D. McReynolds, Clerk.

(Title of Court and Cause.)
No. 479.
BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS: That we the EMMETT IRRIGATION DISTRICT, a municipal corporation, W. H. SHANE, N. B. BARNES and E. J. REYNOLDS, personally and as directors, and R. B. SHAW, personally and as Treasurer, of said Emmett Irrigation District, as principals, and JOHN McNISH and V. T. CRAIG as sureties, acknowledge ourselves indebted to and are held and firmly bound to plaintiffs and appellees above named, to-wit, J. Paul Thompson, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and National Bank of Oxford, a corporation, and each of them, for themselves and all other bondholders of the Emmett Irrigation District similarly situated, in the sum of FIVE THOUSAND ($5000.00) DOLLARS, for the payment of which well and truly to be made we bind

ourselves and each of us, our and each of our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of September, A. D. 1917.

The condition of this obligation is such that,

WHEREAS, on the 16th day of July, 1917, in the District Court of the United States for the District of Idaho, Southern Division, in a suit pending in that court wherein the above named plaintiffs were plaintiffs and the above named defendants were defendants, numbered on the Equity Docket in said Court as 479, a decree was rendered against the said defendants, and each of them, and the said defendants and each of them having prosecuted and obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and filed a copy thereof in the office of the Clerk of the District Court to reverse said decree, and a citation directed to said plaintiffs and appellees and each of them, citing and admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco in the State of California on the 22nd day of October, 1917.

NOW if the said defendants and appellants above named, and each of them, shall prosecute said appeal to effect and answer all costs if they or any of them fail to make their plea good, and, further, and in addition thereto, if they or any of them fail to make their plea good, answer all damages, costs and

charges arising by reason of the suspension during the pendency of said appeal by an order of said District Court, filed September 22nd, 1917, of that portion of said decree, providing that defendants, so far as the matter comes within their official duties, apply the money now in said bond fund, or that may hereafter be paid into said bond fund, under the tax levied on the 22nd day of October, 1913, to the payment of interest coupons attached or belonging to the bonds outstanding mentioned in said decree, then the above obligation shall be void, otherwise the same shall remain in full force and virtue.

EMMETT IRRIGATION DISTRICT.
By W. H. SHANE, President.

Attest: H. HAYLOR,
(Seal) Secretary.

W. H. SHANE,
E. J. REYNOLDS,
N. B. BARNES,
R. B. SHAW,
Principals.
JOHN McNISH and
V. T. CRAIG,
Sureties.

Approved: DIETRICH, Judge.
September 22, 1917.

State of Idaho,
County of Gem,—ss.

John McNish and V. T. Craig, being first duly sworn, each for himself deposes and says: That he is a resident and householder within the County of

Gem, State and District of Idaho, Southern Division; that he is worth the amount specified in the within and foregoing bond over and above all his just debts and obligations, exclusive of property exempt from execution, and, more particularly, affiant John McNish says that he is the owner of real property in the County of Gem, State of Idaho of the total value of not less than Fifty Thousand Dollars, and that his total debts and liabilities do not exceed Five Thousand Dollars; and the affiant, V. T. Craig says that he is the owner of real property in the County of Gem, State of Idaho, of the total value of not less than Seven Thousand Dollars, and that his total debt and liabilities do not exceed Two Thousand Dollars.

JOHN McNISH.
V. T. CRAIG.

Subscribed and sworn to before me this 22nd day of September, A. D. 1917.

J. P. REED,
(Seal.) Notary Public.
Residing at Emmett, Gem County, Idaho.

Endorsed: Filed September 22, 1917. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 479.

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL

It is hereby stipulated and agreed by and between plaintiffs and respondents and defendants and ap-

pellants in the above named cause, through their respective solicitors of record, that the following papers and documents constitute all the portion of the record in said cause which are necessary, material or pertinent to the presentation and decision of all questions and matters arising on the appeal in said cause taken by the defendants to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco on the 22nd day of September, 1917, from that certain decree made and entered in said cause by the above entitled court on the 16th day of July, 1917, and that the following described parts of said record and no more, shall constitute the entire record, to be transcribed, certified and included in the record to be transmitted to said Circuit Court of Appeals, on said appeal above described; provided, that if said Circuit Court of Appeals shall on its own motion determine that any part of the record not included in the printed transcript should have been so included for the information or convenience of the court, or if either party shall hereafter desire any additional portion of the record certified to said Court or printed as part of the record, the same may be certified up to said Circuit Court of Appeals, and, if required, printed as a supplement to the record, at the expense in the first instance of the appellants.

The papers referred to in this stipulation as necessary and to constitute said record on said appeal are as follows, to-wit:

Original Bill of Complaint,

Amendments to Bill of Complaint.

Answer.

Stipulation admitting additional parties.

Order bringing in additional parties.

Amendments to Bill.

Stipulation Amending Answer.

Interrogatories for Discovery addressed to J. Paul Thompson and others.

Decision.

Decree.

Petition for Appeal.

Order Allowing Appeal and Suspending Injunction.

Bond, showing approval of Judge.

Assignment of Errors, and acknowledgement of service.

Citation and acknowledgement of service.

Statement of evidence and order settling and allowing same.

Copy of this Stipulation.

Praecipe to the Clerk for record, certificate and return.

J. M. THOMPSON,
FREMONT WOOD and
DEAN DRISCOLL,
Attorneys for Defendants and Appellants.
RICHARDS & HAGA and
McKEEN F. MORROW,
Attorneys for Plaintiffs and Respondents.

Endorsed: Filed September 27, 1917. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 479.

PRAECIPE TO THE CLERK FOR TRANSCRIPT ON APPEAL

To the Clerk of the above entitled Court:

The Defendants above named, having on the 22nd day of September, A. D. 1917, taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, from said certain decree made and entered in said cause in the above entitled court on the 16th day of July, 1917, you will please prepare, certify, print, return and transmit to said Circuit Court of Appeals, transcript of the record in said cause, in accordance with the Act of Congress, approved February 13, 1911, entitled An Act to Diminish the Expense of Proceedings on Appeal and Writ of Error or of Certiorari and rules of Court adopted thereunder, including therein the following portion of the record in said cause, in accordance with the stipulation of all parties to said action and to said appeal, filed herewith, to-wit:

Original Bill of Complaint.

Amendment to Bill of Complaint.

Answer.

Stipulation, admitting additional parties.

Order, bringing in additional parties.

Amendments to Bill.

Stipulation Amending Answer.

Interrogatories for Discovery, addressed to J. Paul Thompson and others.

Decision.

Decree.

Petition for Appeal.

Order Allowing Appeal and Suspending Injunction.

Bond, showing approval of Judge.

Assignment of Errors and acknowledgment of service.

Citation and acknowledgement of service.

Statement of Evidence and Order settling and allowing same.

Stipulation as to Contents of Record on Appeal.

Copy of this Praecipe.

Certificate and Return.

J. M. THOMPSON,
FREMONT WOOD and
DEAN DRISCOLL,

Solicitors for the Defendants and Appellants above named.

Service of the within and foregoing Praecipe, by receipt of copy thereof this 27th day of September, 1917, is hereby acknowledged.

RICHARDS & HAGA and
McKEEN F. MORROW,

Solicitors for Plaintiffs and Respondents.

Endorsed: Filed September 27, 1917. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy.

In the District Court of the United States for the District of Idaho, Southern Division

J. PAUL THOMPSON, A. N. GAEBLER, HELEN M. CONRAD, S. H. HUDSON, HENRY M. WILLIAMS, CHARLOTTE H. SHIPMAN, F. W. HORTON, MARY C. WADDELL, J. WILLIS GARDNER, CHESTER COUNTY TRUST COMPANY, a corporation, LINCOLN UNIVERSITY, a corporation, and NATIONAL BANK OF OXFORD, a corporation, for themselves and all other bondholders of Emmett Irrigation District, similarly situated, Plaintiffs,

vs.

EMMETT IRRIGATION DISTRICT, a municipal corporation, W. H. SHANE, N. B. BARNES, and E. J. REYNOLDS, as Directors, and R. B. SHAW, as Treasurer of the Emmett Irrigation District, Defendants.

In Equity No. 479

CITATION.

United States of America,—ss.

To J. Paul Thompson, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and National Bank of Oxford, a corporation, for themselves and all other bondholders of Emmett Irrigation District, similarly situated, Greeting:

You, and each of you, are hereby cited and admonished to be and appear in the United States Cir-

cuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within thirty (30) days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, in the above entitled cause wherein the defendants above named, to-wit, Emmett Irrigation District, a municipal corporation, W. H. Shane, N. B. Barnes and E. J. Reynolds as Directors, and R. B. Shaw, as Treasurer of the Emmett Irrigation District, are appellants, and you, J. Paul Thompson, A. N. Gaebler, Helen M. Conrad, S. H. Hudson, Henry M. Williams, Charlotte H. Shipman, F. W. Horton, Mary C. Waddell, J. Willis Gardner, Chester County Trust Company, a corporation, Lincoln University, a corporation, and National Bank of Oxford, a corporation, for themselves and all other bondholders of Emmett Irrigation District, similarly situated, said plaintiffs above named, are respondents, to show cause, if any there be, why the decree appealed from in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK S. DIETRICH, Judge of the United States District Court for the District of Idaho, this 22nd day of September, A. D. 1917, and of the Independence of the United States the one hundred and forty-second year.

FRANK S. DIETRICH,
District Judge.

(Seal.)

Attest: W. D. McREYNOLDS, Clerk.

Service of the within and foregoing citation, by receipt of copy thereof this 22nd day of September, A. D. 1917, is hereby acknowledged.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for each and all the Plaintiffs and Respondents above named.

Filed September 22, 1917. W. D. McReynolds, Clerk.

RETURN TO RECORD

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

(Seal.) W. D. McREYONLDS,
Clerk.

(Title of Court and Cause.)
No. 479.
CLERK'S CERTIFICATE

United States of America,
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages numbered 1 to 238, inclusive, contain true and correct copies of the Original Bill of Complaint, Amendment to Bill of Complaint, An-

swer, Stipulation admitting additional parties, Order bringing in additional parties, Amendments to Bill, Stipulation amending answer, Interrogatories for discovery, addressed to J. Paul Thompson and others, Decision, Decree, Statement of Evidence, Petition for appeal and order allowing same, Assignment of Errors, Bond on Appeal, Stipulation as to Record on Appeal, Praecipe, Original Citation, Return to record and Clerk's certificate, in the cause aforesaid, which together constitute the transcript of record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit. I further certify that the cost of the record herein amounts to the sum of $274.85 and that the same has been paid by appellants.

Witness my hand and the seal of said Court, this 17th day of October, 1917.

(Seal.) W. D. McREYNOLDS,
Clerk.